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PERSONALITY IN INTERNATIONAL LAW*

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I. LEGAL PERSONALITY OF THE STATE

The overwhelming majority of writers on international law seem still inclined to advocate that states only be recognized as legal persons in international law.[1] Since, however, neither the term "state" nor the term "legal personality" is unequivocal, it may well be questioned whether a conclusion reached by means of a mere combination of these terms is adequate to clarify the pertinent problems.

Through constant repetition, the unqualified designation of the state as the only legal person in international law became seemingly self-evident. Yet it should not be overlooked that the concept of the state is much older than the description of the state in terms of legal personality, since the latter terminology does not appear before the middle of the seventeenth century. There seems to be general agreement that Thomas Hobbes originated the usage of speaking of the "state" as a "person," when he proposed to define a "body politic"[2] as "a multitude of men, *united as one person* by a

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[1] Cf., for instance, G. G. Wilson, *Handbook of International Law* (3rd ed., St. Paul, 1939), p. 18: "Only states in the strict sense of the word are recognized as full legal persons in international law."

[2] For the term "body politic" as applied to America, cf. the Mayflower Compact, November 11, 1620, in H. S. Commager, *Documents of American History* (2 vols., New York, 1935), Vol. 1, p. 15: "In the name of God, Amen. We, whose names are underwritten, . . . Do by these Presents, solemnly and mutually in Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid." For a synonymous use of "body politic" and "state," see the reference in the constitution of Massachusetts (1780) to "a free, sovereign, and independent body politic, or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS." Text in *Annotated Laws of Massachusetts*, Vol. 10 (1933), p. 44.

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common power."[3] Although Hobbes recognizes in principle the complex character of this personal entity, he does not call it a corporation; this term he reserves for "private" corporations, subordinate to the commonwealth at large.[4]

The first elaborate theory concerning the state based upon the concept of group personality was propounded by Samuel Pufendorf, who described the state as a "single person with intelligence and will, performing other actions peculiar to itself and separate from those of the individuals."[5] Thus he qualified the state as an entity in relation to other states,[6] but the inner structure of the state Pufendorf characterized as follows: "A state is a compound moral person, whose will . . . is considered the will of all."[7] In this definition, the expression "compound [or composite] moral person" is used in opposition to "simple moral person."[8] What is meant by "moral" person would be rather difficult to explain without a detailed discussion of the peculiar philosophical premises of Pufendorf's doctrine;[9] but he certainly chose this word in order to indi-

[3] Cf. Thomas Hobbes, *The Elements of Law* (1650); ed. by F. F. Tönnies (Cambridge, England, 1928), Part I, Ch. 19, §8 (Italics supplied); see also Thomas Hobbes, *Leviathan*, Part II, Ch. 17: " . . . the multitude so united in one Person, is called a COMMONWEALTH, in latin CIVITAS."

[4] "So also may there be amongst a multitude of those members, instituted a *subordinate union of certain men*, for certain common actions to be done by those men for some common benefit of theirs, or of the whole city. . . . And these subordinate bodies politics are usually called CORPORATIONS." Cf. Hobbes, *The Elements of Law, op. cit.*, Part I, Ch. 19, §9. Cf. also J. B. Moore, *A Digest of International Law* (8 Vols., Washington, 1906), Vol. 1, pp. 15 f.

[5] Cf. Pufendorf, *De Iure Naturae et Gentium*, Libri Octo, in *The Classics of International Law*, ed. by J. B. Scott, Vol. I, text of 1688. Introduction by Walter Simons, Vol. II. Translation by C. H. and W. A. Oldfather, with a translation of the Introduction of Walter Simons (Oxford, London, 1934).

[6] *Ibid.*, Book VII, Ch. II, §13. (Translation, p. 984). Since the end of the seventeenth century the term *persona moralis* obtained, but restricted to *personae compositae*, while the *persona simplex* was held equivalent to *persona physica*. Cf. O. v. Gierke, *The Development of Political Theory*, translated by Bernard Frey (New York, 1939), p. 229, n. 195. German legal terminology substituted later *persona moralis* through *juristische Person*. It is almost generally assumed—cf., for instance, F. Hallis, *Corporate Personality* (London, 1930), *op. cit.*, p. 6, n. 3—that the term *juristische Person* was coined by C. F. v. Savigny in his *System des heutigen römischen Rechts*, (8 vols., Berlin, 1840), §§85, 86, vol. 2, pp. 235–245; but it certainly was used for the characterization of the state as early as the end of the eighteenth century. See J. G. Fichte, *Grundlage des Naturrechts* (1795/1796), in *Sämtliche Werke* (Berlin, 1845/1846), Vol. 3, p. 281: "der Staat . . . , der eine juridische Person ist."

[7] *Ibid.*, Book VII, Ch. II, §14. (Translation, p. 985.)

[8] *Ibid.*, Book I, Ch. I, §12. (Translation, p. 985.)

[9] Pufendorf tends to describe "moral persons" as modifications of natural substances; they are not "real" but may cause real effects: cf. Book I, Ch. I, §6: "Al-

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cate that a legal person, whether it be a single or composite one, is not identical with "natural" or "biological" personality.[10] At any rate, in Pufendorf's system the personality of the state is conceived as a complexity of members and thereby, for the first time, as a group-personality.

It is not within the range of this study to furnish a complete survey of the development of the corporate idea[11] in its relationship to the state-concept; but it should be mentioned at least that Maitland[12] undertook, more than two centuries after Pufendorf, to demonstrate to the English and American public the close connection between the theory of the state (*Staatsslehre*) and the theory of the corporation (*Genossenschaftslehre*). The fact that the interrelationship between the theories of the corporation and of the state is still considered a primary problem in the social sciences is confirmed by the great number of legal monographs on this topic which have appeared during the last two decades.[13]

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though moral entities do not exist of themselves, and consequently should in general not be classified as substances, but rather as modes, we nevertheless find many of them considered like substances, because other moral things appear to be directly founded in them."

[10] One can speak of moral persons only by analogy to real beings; see *ibid.*, Book I, Ch. 1, §12: "Moral entities, regarded on the analogy of substances, are termed moral persons."

[11] The term "corporate idea" is used throughout this study exclusively with respect to the state as a corporate entity; no reference is made to any peculiar state-type which tends to characterize itself as composed of corporations of a lower level than the state, such as the Italian Fascist state. For the development of the "corporation" concept in political theory since Hobbes, see O. v. Gierke, *Natural Law and the Theory of Society, 1500–1800*, translated by E. Barker (2 vols., Cambridge, England, 1934), esp. Vol. 1, p. 114 f. For the corporation theory of Johannes Althusius (1557–1638) and its place in political theory, see O. v. Gierke, *The Development of Political Theory*, translated by B. Freyd (New York, 1939). See also C. J. Friedrich's Introduction to his edition of Johannes Althusius, *Politica methodica digesta of Johannes Althusius*, in *Harvard Political Classics* (Cambridge, Mass., 1932).

[12] Cf. F. W. Maitland's Introduction to O. v. Gierke's *Political Theories of the Middle Age* (Cambridge, England, 1922, esp. p. xi f.). "The law's old habit of coördinating men and bodies politic as two kinds of Persons seems to deserve the attention of the modern philosopher, for, though it be an old habit, it has become vastly more important in these last years than it ever was before." Cf. *ibid.*, Maitland's remarks on the relationship between *Staatslehre* and *Genossenschaftslehre*.

[13] Among the English publications, see especially F. Hallis, *Corporate Personality* (London, 1930); E. Barker's introduction to his edition of Gierke, *op. cit.*, Vol. 1, esp. pp. 62, 81, 83; and P. W. Duff, *Personality in Roman Private Law* (Cambridge, England, 1938), p. 220 f. See especially the excellent comment on the conflicting constructions of the term "corporate personality," pp. 206–236. See also H. Pinney, "The Nature of the Corporation," in *Temple University Law Quarterly*, Vol. 14 (1939–1940), pp. 443–447; although Pinney does not consider the state as a corpora-

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The practice of the courts, however, seems to have been to pay little attention to the doctrine of the state's corporate personality, and only very seldom has an international or domestic court expressly referred to the corporate character of the state. As a rare example, the case Greek Government v. Vulkan Werke, may be quoted, where the Greco-German Mixed Arbitral Tribunal held:

"That, according to generally recognized principles, corporations (*les corporations*) existing by virtue of public law, such as the state and provinces and communes, have a dual character;

That, whereas, on the one hand, they exercise rights of sovereignty limited to a varying extent by the established rules of each country, they are, on the other hand, legal persons (*personnes morales*), similar to other legal persons (*personnes morales*) in private law, such as societies, associations," etc.[14]

The modern states having been characterized as corporate persons, it might be asked whether states in the sense of international law[15] are the only corporate persons which are endowed with legal personality in international law. A considerable number of European authors, as well as the practice of states, seem willing also to recognize, on the same level with states, the international personality of two organizations of a predominantly religious character, i.e., the Holy See[16] and the so-called sovereign Order of Malta.[17]

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tion, and seems inclined to advocate Gierke's and Maitland's theory of the *reale Verbandsperson* as to private corporations. For the French institutional approach to related problems, see R. Clemens, *Personnalité morale et personnalité juridique* (Paris, 1935), and R. G. Renard, *La philosophie de l'Institution*, 2 vols. (1930, 1939), esp. Vol. 2, pp. 133–157. For recent German monographs in this field, cf. L. Schnorr v. Carolsfeld, *Geschichte der juristischen Person*, Vol. 1 (München, 1933), and H. J. Wolff, *Organschaft und juristische Person* (2 vols., Berlin, 1933/1934).

[14] See *Recueil des décisions des Tribaunaux Arbitraux Mixtes* (Paris, 1922 f.), Vol. 5 (1926), pp. 887 f., 896. Translation from the French by the writer.

[15] For the term "states in the sense of international law" as a synonym for international personality, see H. W. Briggs, *Law of Nations* (New York, 1938), p. 63. See also J. L. Kunz, "Die Staatenverbindungen," in *Handbuch des Völkerrechts* (Stuttgart, 1929), p. 19. Whenever the term "state" appears in this paper without qualification, it refers to the "state" in the sense of international law.

[16] For the legal personality of the Holy See, cf. L. Le Fur, *Le Sainte-Siège et le Droit des Gens* (Paris, 1930), p. 12: "Le Saint-Siège est d'abord une personne du droit des gens. . . . " See also *ibid.*, p. 17 f. See also H. Hochfeld, *Die Rechtspersönlichkeit des Heiligen Stuhles* (Hamburg, 1930); M. Falco, *The Legal Position of the Holy See Before and After the Lateran Treaties* (London, 1935); A. Verdross, *Völkerrecht* (Berlin, 1937), p. 60; G. Balladore Pallieri, *Diritto Internazionale Pubblico* (Milano, 1937), p. 181 f.

[17] G. P. Cansacchi, *La personalità di diritto internazionale del S.M.O. Gerosolomitano detto di Malta* (Roma, 1936). Cf. also the case *Nanni e Pace c. Sovrano Mili-*

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The corporate personality of the Holy See is expressly referred to in Can. 100 of the *Codex Iuris Canonici*, where it is declared that by divine institution the Catholic Church is a moral person.[18] As for the sovereign Order of Malta, it should be remembered that certain types of monastic organizations were recognized as corporations (*universitates, collegia*) even in medieval times. There can be little doubt therefore that, by reason of its inner structure, the Order of Malta can be deemed a corporation.

There is still another group phenomenon on which is conferred, under certain conditions, legal personality of almost equal standing with states, namely, insurgents. But insurgents also, if recognized as belligerent parties, for instance, are taken as groups and not as individuals. Hence it can be inferred that, whenever international personality has been bestowed upon insurgents, it has had to be construed as group personality.

The definition of the state in terms of corporate personality, however, is not comprehensive enough to reveal those implications of the state concept which are traditionally involved in any discussion of the state's personality under international law. It seems, therefore, necessary to examine the essential legal characteristics of the state in comparison with other types of composite corporate persons.

Composite corporations can be divided into at least two basic types. The first includes corporations, the constituent elements of which are considered as of equal rank;[19] the second comprises at least two categories of members—the governing and the governed.

The state as a corporate person is certainly to be subsumed under the second category,[20] since in international law the existence

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tare Ordine di Malta (1935), in *Rivista di diritto internazionale*, Vol. 27 (1935), pp. 369–374.

[18] See *Codex Iuris Canonici*, Can. 100, §1, "Catholica Ecclesia et Apostolica Sedes *moralis personae rationem habent ex ipsa ordinatione divina;* alterae inferiores personae morales in Ecclesia eam sortiuntur sive ex ipso iuris praescripto sive ex speciali competentis Superioris ecclesiastici concessione data per formale decretum ad finem vel religiosum vel caritativum." (Italics supplied.). Cf. also Can. 99 and Can. 100, §2, Can. 101, 102. [19] See below, p. 225.

[20] The description of the state as a "corporate person" of a hierarchic structure appears for the first time, according to Gierke, in the writings of J. H. Boehmer. Cf. Gierke's notes to §16 of his *Natural Law and the Theory of Society, op. cit.*, Vol. 2, p. 318, n. 166. For "J. H. Boehmer, a *societas* means a *complexus plurium personarum unitarum inter se ad certum finem:* it constitutes a 'moral body,' and the *spiritus* of that body is a union of the wills of all, in one will, such as that *conjunctim considerati*

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of a government is assumed as a prerequisite of a state.[21] In so far as the nature of the state and the essence of international personality are frequently described in rather vague terms, the peculiar character of the state's corporate personality as an "unequal society" should not be overlooked.[22]

Furthermore, the functioning of a government has repeatedly been recognized as the decisive factor in proving the existence, or the coming into existence, of a state in the sense of international law. Thus the Czechoslovak Supreme Administrative Court ruled as follows:

"The sovereignty of the Czechoslovak Republic was established by the revolution of 28 October 1918, on which day the National Committee assumed sovereignty in all its aspects. It was through this act of assumption of sovereignty that the Czechoslovak State came into existence, and not by virtue of international treaties which took for granted the existence of a State which was a signatory to them."[23]

In regard to the internal structure of the state, the legal control of all persons within its jurisdiction is usually considered the essential criterion of a government.[24]

An additional evidence of the hierarchic structure of the state's personality in international law can be seen in the fact that the term "government" is repeatedly used as a metaphor, as *pars pro*

unam in moralibus repraesentent personam. In an 'equal society,' this 'union of wills, is based upon 'simple obligation'; but just for that reason it remains imperfect. In an 'unequal society'—though the ground or basis is still an 'association of equals'—the factors of *imperium* and *subjectio* are superimposed, by the 'submission of all wills to the single will of one man or of a whole council,' with the result that *voluntas omnium in voluntate hujus ita concentratur, ut quod imperans summus in negotiis ad finem civitatis spectantibus vult, omnes, velle moraliter censeantur.*" Cf. *Jus. publ. univ. P. gen.* c. 2, §4; c. 2, §§1–18; c. 3, §1.

[21] See T. Baty, "Can an Anarchy be a State?," *American Journal of International Law*, Vol. 28 (1934), pp. 444–454, esp. p. 451. "The point remains that a state must have a government. This is so elementary a proposition that it is little discussed by authors." See also C. C. Hyde, *International Law* (2 vols., Boston).

[22] Cf. *supra*, n. 2.

[23] Cf. *Establishment of Czechoslovak State Case* (1925), in McNair-Lauterpacht, *Annual Digest of Public International Law Cases*, Years 1925–1926 (London, New York, Toronto, 1929), Case No. 8, p. 13 f.

[24] See W. H. Taft, as sole arbitrator in Arbitration between Great Britain and Costa Rica, *American Journal of International Law*, Vol. 18 (1924), pp. 147–174, esp. p. 154. "The question is, has it [the *de facto* government] really established itself in such a way that all within its influences recognize its control, and that there is no opposing force assuming to be a government in its place? Is it discharging its functions as a government usually does, respected within its own jurisdiction?"

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toto, with reference to a foreign state. Thus, in Burnet v. Chicago Portrait Co., Chief Justice Hughes held:

"The word 'country,' in the expression 'foreign country,' is ambiguous. It may be taken to mean a foreign territory or a foreign government . . . *When referring to a foreign government, it may describe a foreign state in the international sense, that is, one that has the status of an international person with the rights and responsibilities under international law of a member of the family of nations.*"[25]

To recapitulate: the very concept of government implies a distinction between governing and governed group members. Although the state in its external relation is considered a unit whereby the international acts are, in principle, imputed to the state as such,[26] the legal position of the members within such corporate personality should be clearly determined.[27] In addition, the legal status of a corporate person must be qualified with respect to superior, co-equal, or inferior corporations, since it is dependent upon the rank of a given corporate entity.

It has been indicated above that Hobbes considered "private" corporations as of a lower level than the state-person;[28] and this differentiation in rank seems one of the reasons why he did not ascribe the attribute of a "corporate" person to the state, but confined himself to designating the state simply as a person. Pufendorf, however, under the heading "compound moral persons or societies,"[29] mentions the state (*respublica*) as well as private corporations (*quae vocantur collegia*). He subdivides the category of compound moral persons furthermore into principal (*principales*) and inferior (*minus principales*)[30] personal entities. Within this hierarchy of persons, the state is the supreme personal unit as far as civil matters—that is to say, non-ecclesiastical matters—are con-

[25] See Burnet v. Chicago Portrait Co. (1931), 285 U.S. 1, 5 f. Italics supplied.

[26] As to imputation, cf. Pufendorf, *op. cit.*, Book I, Ch. V, §§4–6, and *ibid.*, Ch. IX.

[27] For clear distinctions with regard to the double aspect of the problem, see C. Eagleton, *The Responsibility of States in International Law* (New York, 1928), esp. pp. 26–94.

[28] Cf. *supra*, p. 218.

[29] See S. Pufendorf, *De Iure Naturae et Gentium*, Book I, Ch. 1, §13 f. Latin text *op. cit.*: "Persona moralis composita constituitur, quando plura individua humana it inter se uniuntur, ut que vi istius unionis volunt aut agunt, pro una voluntate, unamque actione, non pro pluribus censeantur." See also Translation, p. 13 f.

[30] Cf. Pufendorf, *ibid.*, Book I, Ch. 1, §12.

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cerned;[31] in other words, the state is the supreme corporation. Yet the practice of states, especially during the nineteenth century and the first decades of the twentieth century, has brought into existence corporate persons of a rank even superior to that of the state.[32]

The legal structure of the Permanent Court of International Justice furnishes a convincing example. The Court's corporate personality can be inferred from Articles 2 and 3 of its Statute.[33] In addition, the usage of the term "Court" throughout the Statute should not be deemed a mere figure of speech, but rather a char-

[31] Cf. *ibid.;* see also Book VII, Ch. VI, §4, where Pufendorf expressly refutes any differentiation between the sovereignty of the state and the sovereignty of the ruler: "If one inquires in a general way where the supreme sovereignty (*ubinam summum imperium reperiatur*) lies, the reply is made that it lies in the state; if one inquires more specifically what person in the state holds the sovereignty, the reply is made, the King, or senate, or assembly. But who would infer from this the existence of two distinct sovereignties, of which the real one is vested in the state, the personal one in the King? It would be just as absurd for a man to try to imagine two distinct sights in a man, one which resides in a man as a common subject, a second which resides in the eye as in a proper subject." Cf. the Latin original: "Sicuti ineptus fuerit, qui duos distinctos visus in homine fingere velit; unum, qui sit in homine tamquam in subjecto communi, alterum qui in oculo tamquan in subjecto proprio." For this problem, see also Gierke (ed. by Barker), *op. cit.*, Vol. I, p. 137 f.

[32] For the concept of supranational corporate persons, see E. Franckenstein, *Internationales Privatrecht* (Berlin, 1926), Vol. I, p. 505 f. See also C. Rühland, "Le problème des personnes morales en droit international privé," in *Recueil des Cours*, Vol. 45 (1933), pp. 457–467; and the bibliographical notes, *ibid.*, pp. 468–472. Cf. also Gierke, ed. by Barker, *op. cit.*

[33] The official English text of the Statute is misleading, because the phrase, "La Cour permanente de Justice internationale est *un corps des magistrats independants*, . . . " has been translated as follows: "The Permanent Court of International Justice *shall be composed of a body of independent judges.*" This translation distorts the original meaning, since, according to the French wording, the Court is not "composed of" but constitutes a corporate body. Article 3 of the Statute, which provides that "the Court shall consist of 15 members," refers to the judges only. They are no doubt supposed to act in corporate capacity, but are entitled to majority decisions. (Article 55.) The immediate connection between Article 2 and Article 3 seems to stress the argument of the corporate personality of the Court, as far as its "normal" activity is concerned; for, as a matter of fact, the Court's personnel included far more than fifteen members. The registrar, for instance, was not considered a "member" of the Court. For the office of the Registrar, cf. M. O. Hudson, *The Permanent Court of International Justice* (New York, 1934), p. 289 f. Bustamente holds the question of the legal personality of the Court not settled, but adds: "This is an important question; some day or other it will be raised." See A. S. de Bustamente, *The World Court* (New York, 1925), p. 168. Hudson, on the other hand, is not willing to ascribe any importance to this problem. Speaking of the Court in its "private" relations, he says: "The question has been mooted whether the Court has a juridical personality, enabling it to hold, lease, and transfer property; *but it seems quite unimportant for all practical purposes.*" *Ibid.*, p. 312, n. 75.

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acterization of a definite legal phenomenon. In contradistinction to the state, with its corporate structure, the Court constitutes a corporate person that provides equal rank for its "members."[34] The difference in the membership figure can be disregarded in this context.[35]

It is not so easy to ascribe supranational personality to the League of Nations as, for instance, to the Permanent Court of International Justice. In accordance with the aforesaid characterization of a supranational corporate person, the League of Nations can be considered as having acted in the capacity of a supranational person, by exercising certain functions. A resolution of the League of Nations Council, for example, addressed to two parties in dispute, had legal consequences, wherefore it is proper to say that in this respect the League had the character of a supranational corporate person.[36]

As concerns the rank of corporate persons, it should be mentioned that the state itself can, under exceptional conditions, be treated as if holding a rank inferior to its normal one within the hierarchy of corporations. This is the case whenever the state appears as an addressee of so-called private law norms. Consequently, the state assumes in such a legal relationship the same rank as a private corporation, wherefore it is judged as if it were a corporation acting in private capacity.[37]

A mere structural qualification of the state by reference to its group personality, its hierarchic character, and its specific rank in relation to other corporate personalities, would not suffice even for

[34] Cf. *supra* n. 20.

[35] The mere quantitative analysis of group personality is not always decisive if the rank of a corporate person is in question. The state of the City of the Vatican with about 1,000 inhabitants, for instance, is a sovereign state, but India, with more than 300 million inhabitants, is not.

[36] For actions of the Council under Article 15, §6 of the Covenant, see J. Ray, *Commentaire du Pacte de la Société des Nations* (Paris, 1930), pp. 73, 77, esp. p. 225, and O. Göppert, "Der Völkerbund," in *Handbuch des Völkerrechts* (Stuttgart, 1938), pp. 395 f., 472. For analogous competences of the Assembly, see Article 15, §9.

[37] See Greek Government v. Wulkan Werke, in *Recueil des Décisions des Tribunaux Arbitraux Mixtes*, *op. cit.*, p. 897: "il résulte de cette assimilation que l'expression 'ressortissant' comprend également l'État dans tous les cas où celui-ci agi en qualité de personne privé." Also McNair-Lauterpacht, *Annual Digest of Public International Law Cases*, 1925, 1926, *op. cit.*, Case No. 12, p. 19 f. See also *P.C.I.J.*, *Series A, No. 7*, p. 74, as to the nationality of a "Corporation de droit public" (*Koerperschaft oeffentlichen Rechts*) . . . The English translation is misleading in referring to "a corporation of municipal law."

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legal purposes, to describe the state in an adequate manner. A functional element must be added in order to describe the state as a vital social phenomenon. In other words, the state is to be seen as an institution. This term is used here to indicate the constant self-renewal of the state through acts of its functionary and non-functionary members. Consequently, the unity of structure presented so far needs to be supplemented by a reference to the state's unity of action[38] in external as well as internal matters. From the juridico-sociological viewpoint, the state's activity is realized by acts the legal meaning of which is determined by the legal order.

Although the non-functionaries do participate to a certain extent in state activity, the institutional character of a state is primarily molded by the acts of its organs. The discretion of these organs may be more or less restricted by preëstablished rules of international or constitutional law, but the decisive rôle of state functionaries within a state's community can again[39] be illustrated by pointing to the usage of the term government as equivalent to "state"; for governmental acts are indicative of a state's behavior and policy.

In recent methodological discussions in the social sciences, the so-called "institutional" approach is frequently commended as a dynamic sociological or juridico-sociological method designed to replace the merely static or purely legal approach.[40] But the dynamism of the institutional school finds often its counterpart in the special emphasis upon the regularity with which the legally or sociologically relevant acts are performed. Thus, despite its professed dynamism, the institutional school cannot entirely give up relying on a certain stability: wherefore its findings are often con-

[38] For the relationship between legal personality and institutionalism, see R. Clemens, *op. cit.*, and "Institution and personnalité," in R. G. Rénard, *La philosophie de l'institution*, *op. cit.*, Vol. 2, pp. 133–157. "Un *groupement*, c'est une *unité dans une diversité;* ce que traduit remarquablement le terme universitas; cette unité est quelque chose de réel; et elle imprime à chacun de ses membres un cachet qui le designe comme tel. Un *groupement humain* c'est une *unité d'action dans une diversité d'agents;* et cette unité d'action réagit sur les agents en déterminant entre eux une certaine manière d'être qui leur est commune." *Ibid.*, p. 138. This is the dynamism of the institutional theory of Mr. Rénard. See *ibid.*, p. 149. "Le théorie de l'institution visé à incorporer dans le droit, le réel, le vivant tel qu'il se comporte." *Ibid.*, p. 149 f.

[39] See *supra*, p. 223.

[40] See, for instance, K. N. Llewellyn, "The Constitution as an Institution," in *Legal Essays in Tribute to Orrin Kip McMurray*, ed. by M. Radin and A. M. Kidd (Berkeley, 1935), pp. 277–322; esp. pp. 292 f. and 302.

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ditioned by the presupposition of a stable society.[41] This antinomy between the static and dynamic elements of the word "institution" is probably due to an equivocation inherent in the term itself; for institution may mean either the act of instituting or the established institution itself. Now, the dynamic wing of the institutional school tends to stress the energetic element of action, while the static wing tends to emphasize the existence of an established order, which is sometimes seen as an enduring "pattern" for action.[42] None of the institutional schools can wholly drop the pattern-concept, because it contains those factors that determine the actors and the acts to be performed. In contrast, the time-element is frequently introduced to describe the realization of that institutional set-up through acts. Here, as a rule, not the single act counts, but the repetition of acts and the anticipation of the regularity of such acts.[43] It is this time-element which deserves our attention, and a few examples may help to elucidate the statement that also in international law the state is conceded to be an institution.

An allusion to the time-element was certainly contained in the questionnaire of the League of Nations concerning the admission of members, when Question 3 inquired whether a country that was to be admitted had a *stable* government. The stability was undoubtedly asked for as a guarantee of the regular performance of governmental obligations, but not of an identity of personnel.[44]

The regular functioning of the government as a prerequisite of an independent state was even more clearly formulated in the report of the League's Mandate Commission concerning the termination of a mandate régime. Among the "conditions, the presence of which will in any case indicate the ability of the political com-

[41] Cf. W. H. Hamilton's article "Institution" in *Encyclopaedia of the Social Sciences* (2nd ed., 1935), Vol. 8, pp. 84–89. "In a stable or slowly changing society, it [an institution] fits rather neatly into the cultural pattern."

[42] Cf. Llewellyn, *op. cit.*, p. 292 f. "The existence of an institution lies first of all and last of all in the fact that people do behave in certain patterns a, b, c, and do not behave in other conceivable patterns d to w. And the probability that an institution will continue coincides with whatever probability there is that people will continue so to behave." This quotation is not given with the intention to classify Llewellyn as a representative of a static school of institutionalism, but because of its clear wording.

[43] Cf., for instance, F. A. Ogg and P. O. Ray, *Introduction to American Government* (New York, London, 1925), p. 12.

[44] Question 3 regarding recognition and Question 4—"Is the country freely governed?"—and their different interpretations cannot be dealt with in this context. See *League of Nations.* A. 91. 1921. VII.

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munity to stand alone and maintain its own existence as an independent state," is the requirement that the political community under consideration "must have a *settled Government and an administration capable of maintaining the regular operation of essential Government services.*"[45]

Not only states, but also supranational (international) judicial agencies, have been construed as institutions. About thirty years ago, Lammasch proposed to classify supranational (international) tribunals according to a distinction made between isolated and institutional tribunals. The latter he qualified as characterized by permanency and regularity of function.[46] This idea of permanency was expressly recognized in the official name of the two international courts established at The Hague under the titles, "Permanent Court of Arbitration" and "Permanent Court of International Justice."

Besides supranational (international) judicial organs, other supranational (international) corporate persons, entrusted with non-judicial functions, can be deemed institutions. This view has explicitly been upheld by the Permanent Court of International Justice in its Advisory Opinion No. 14, where the European Commission of the Danube "has been treated as forming a necessary unit."[47] Moreover, because of the great variety of functions bestowed upon the European Commission and its long and continued activity, dating back to the middle of the nineteenth century, the

[45] *League of Nations Permanent Mandates Commission. Minutes of the Twentieth Session.* June 9–June 27, 1931. Geneva, 1931. Annex 16, p. 229. Italics supplied. For the principle of efficacy (*effectivité*) in connection with the recognition of the government, see *supra*, p. 222, n. 24.

[46] Cf. H. Lammasch, "Die Lehre von der Schiedsgerichtsbarkeit in ihrem ganzen Umfange," in *Handbuch des Völkerrechts* (Stuttgart, 1913), p. 55. "Am zutreffendsten scheint es mir, im Falle eines bloss für den konkreten Streit, für eine *lis jam nata*, eingesetzten Schiedsgerichts von einem *isolierten*, im andern Falle des für künftig entstehende Streitfälle berufenen Schiedsgerichts von einem *institutionellen* Schiedsgericht zu sprechen, denn das charakteristische Moment und der besondere Wert eines Schiedsgerichts der letzteren Art liegt darin, dass es nicht bloss für einen einzelnen, isolierten Fall berufen ist, sondern, dass es als eine für die ganze Dauer des Vertrages bestimmte *Institution* eingesetzt wird, auf deren Funktion man berechtigt ist, von vornherein zu rechnen." See also *ibid.*, p. 59.

[47] Cf. the French text, which refers to "une unité nécessaire," in P.C.I.J., Series B. No. 14, p. 54; see also *ibid.*, p. 43. "En prolongeant l'existence de la Commission européenne et en lui confiant le pouvoir de règlementer, les Parties au traités de Paris se sont bornées à assurer l'exercise, *par un organisme international existant* [by an existing international body] créé par elles-mêmes, d'un pouvoir essentiel qu'elles avaient en l'intention de confier à un organisme autre mais analogue."

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Permanent Court held that the "European Commission is *not a State, but an international institution* with a special purpose."[48]

II. LEGAL PERSONALITY OF THE PRIVATE INDIVIDUAL

On this controversial issue, four schools of thought can be distinguished, presenting approximately the following doctrines: (1) The private individual has no legal personality; this attribute is reserved for states. (2) The private individual is the object, not the subject, of international law. (3) The legal personality of the state is fictitious; only individuals are the "real" subjects of international law. (4) States are the "normal" subjects of international law, but the validity of rules concerning individuals is not excluded.

(1) One of the reasons why the private individual is not considered as enjoying legal personality under international law seems to be that those criteria which are inherent in the state's corporate personality cannot be shown as characteristic of the private individual. Therefore, the traditional tendency to deny legal personality to the private individual can be better understood if the term "private individual"[49] is regarded, not as legally self-sufficient, but in comparison with the above defined concept of state-personality.[50]

The private individual is, in principle, not entitled to act independently of his position within the corporate personality, or to bring about legal effects through independent and direct actions. This legal situation may be explained by the individual's status within a corporate body, which latter is regarded as a legal entity with respect to the outside world.[51] Moreover, the private individual is differentiated from the organs of the state. Within a state as a corporate personality of a hierarchic structure (*societas inequalis*),[52] the individuals who act in a public capacity are deemed

[48] See *ibid.*, p. 64. Italics supplied.

[49] The term "private individual," as applied in this study, designates, as a rule, simple persons. But also a private corporation can be considered a "private individual." In the latter case, attention is focused on the rank within a hierarchy of corporate units, rather than on the difference in the corporate structure. See *supra*, p. 218, for the differentiation between state and private corporation; for the distinction between "simple" and "composite" persons, see *supra*, p. 218.

[50] See *supra*, p. 225 f.

[51] This legal situation is especially conspicuous whenever the responsibility of the state is at stake. Cf. C. Eagleton, *The Responsibility of States in International Law*, p. 44. "Externally regarded, the state is an individual unity, speaking with one voice, even if speaking through many mouthpieces."

[52] See *supra*, p. 221 f.

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superior in their relation to the subjects.[53] In addition, another criterion of the state's personality cannot be claimed by the individual in his normal legal position—the attribute of sovereignty; for the state holds, in general,[54] the highest rank within an assumed hierarchy of personal units.[55] Nevertheless, there are special rules of international law which disregard this hierarchical structure of personal units and treat the individual as the immediate addressee of international law. In these exceptional cases, the question of the priority of rank among the different legal units becomes irrelevant.[56] Finally, the individual is not considered an institution. An individual may act on behalf of an institution; he may, time and again, perform the same acts in exercising his profession; yet, even the continuance of such an activity during a considerable period will not confer upon an individual the character of an institution.[57]

(2) The widely accepted theory that the private individual, especially the citizen, is an object, but not a subject, of international law[58] seems based primarily upon a specific interpretation of

[53] Cf. P. Heilborn, *Das System des Völkerrechts* (Berlin, 1896), p. 58 f. For a clear distinction between these two groups of persons, see also S. Pufendorf, *op. cit.*, Book I, Ch. 1, §12.

[54] For exceptions to this rule, see *supra*, p. 224 f. Cf. for instance, A. Gorovtsev, "La notion d'objet en droit international en son rôle pour la construction juridique de cette discipline," *Revue de droit international et de la législation comparée*, 3rd Ser., Vol. 6 (1925), p. 183 . . . "les individus ne possédant certainement des droits de souveraineté." [55] See below, p. 243. [56] See below, p. 240 f.

[57] Cf. A. v. Hold-Ferneck, *Lehrbuch des Voelkerrechts* (2 vols., Leipzig, 1930 f.), Vol. 1, p. 251. Hold denies the legal personality of the individual with explicit reference to the time element: "Man bedenke doch auch: Deshalb, nur deshalb sollen einzelne Menschen, Herr X, Frau Y, Fräulein Z, als 'Subjekte des Voelkerrechts' den Staaten und der katholischen Kirche an die Seite gestellt werden, weil sie vielleicht, einmal in ihrem Leben bei einem gemischten Schiedsgericht auftreten duerfen. Es soll ein Voelkerrechtssubjekt denkbar sein, das ein einziges Recht hätte, sozusagen eine internationale Eintagsfliege."

[58] Cf. M. Siotto Pintor, "Les sujets du droit international autres que les Etats" in *Recueil des Cours*, Vol. 41 (1932), p. 255 f. See also Geffcken's comment on Heffter's classification of international persons, in A. S. Heffter, *Le Droit International de l'Europe*, 4th ed., by F. H. Geffcken (Berlin-Paris, 1883), p. 44. "Il serait sans doute plus juste de dire que l'individu n'est que l'objet médiat du droit international." Cf. furthermore, P. Heilborn, *Das System des Völkerrechts* (1912), p. 83; E. M. Borchard, *The Diplomatic Protection of Citizens Abroad* (New York, 1915), p. 16 f.; and Borchard's book review in *American Journal of International Law*, Vol. 31 (1937), pp. 748–750, esp. p. 749. Oppenheim-Lauterpacht, *International Law* (5th ed., London, New York, Toronto, 1937), Vol. I, p. 507; R. Quadri, *La sudditanza nel diritto internazionale* (Padova, 1936), esp. pp. 104–106. See also F. S. Dunn, "The International Rights of Individuals," in *Proceedings of the American Society of International Law*, Vol. 35 (1941), p. 14.

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the individual's position within the corporate unit of the state. A number of reasons have been brought forward in favor of this doctrine, and the majority of eminent writers on international law still support it. It is argued by some that the state is the only addressee of international norms, wherefore, by the very definition of international law, the individual cannot be held a subject in this sphere of law. Especially the tie of allegiance which holds together citizens and their states precludes allowing the private individual the right to act independently of the corporate body to which he belongs. According to the view of others, the individual is only partly subject to international law, since he is allegedly subject to duties without having any rights,[59] and for this reason the term object is to be preferred.

One point seems clear, without any further analysis: The object-theory presupposes, in its comparison of state and individual,[60] a complex state-personality, composed of a multiplicity of members of different legal levels. Additional evidence in favor of this argument is to be seen in the different legal treatment of individuals, depending on whether they act in public or private capacity.[61]

The object-theory has been challenged on the ground that it is illogical to apply a double standard to domestic and international law, namely, to recognize a definite legal entity as a person or a subject under municipal law, but at the same time to consider it as a mere object in the international sphere.[62] Besides being illogical, is not this theory even incompatible with the general principles of law recognized by civilized nations (Article 38, §3, Statute of the Permanent Court of International Justice) when it considered the same person as a subject in domestic, but as an object in international, law? It might be added than an argument based on the "general principles of law" would not necessarily exclude the assumption that an individual's range of rights might not be the same in international as in domestic law.

(3) Paradoxically enough, even that group of international law-

[59] See A. Verdross, *Völkerrecht*, *op. cit.*, p. 51 f.

[60] See *supra*, p. 221. [61] See P. Heilborn, *op. cit.*, p. 58.

[62] Cf. Gorovtsev, *op. cit.*, p. 179. "Le côté faible de l'opinion qui envisage ces rapports comme objet en droit international, en tant qu'ils depassent les limites du droit national, c'est justement que ces mêmes rapports font simultanément l'objet des deux domaines du droit différent." This insight, however, did not prevent Gorovtsev from undertaking to establish a new theory concerning "l'objet en droit international"; see *ibid.*

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yers who consider the private individual as the only "real" subject in international law seem to presuppose the corporate personality of the state. Thus Scelle refutes the traditional term "international law" on the ground that it tends to reduce the concept of international law to interstate relations between states in the sense of international law, while in reality these relations should be described and analyzed as relations among individuals.[63] But, if one examines Scelle's line of reasoning, one can easily discover that he disagrees with the traditional theory regarding the legal personality of the state[64] and is dissatisfied with the characterization of the state as a juridic person or as a "moral person."[65] Now, why is that so? Scelle takes up his fight against this concept with the age-old weapon in the struggle for and against the "reality" of the corporate person.[66] Adopting the fiction theory concerning corporate personality, he argues that the state is unreal, because as a corporate entity, a moral person, it cannot have a will of its own, that is to say, a will other than that of the individuals which comprise it.[67] Therefore, the corporate personality of the state is a mere fiction, and fictions are by logical necessity inadequate instruments for scientific analysis. Scelle's argumentation against the "state" as a legal entity would, consistently applied, lead ultimately to an anarchic individualism, because it overlooks the potentialities of legal organization by means of corporate structures.[68]

[63] See G. Scelle, *Précis de droit des gens* (2 vols., Paris, 1932–1934), Vol. 1, p. VII. "Pour nous, les rapports qu'il va s'agir de décrire et d'analyser sont des rapports *entre individus*."

[64] Cf. *ibid.*, p. VII, p. 9.

[65] *Ibid.*, p. 9, "Si la qualité de sujet de droit n'appartient pas à tous les individus et ne leur appartient pas uniformement, elle ne peut cependant appartenir *qu'à des individus*. Elle est en effet un attribut social de la volonté. Il ne peut donc y avoir de sujet de droit que là où il y un être doué de volonté personnelles . . . collectivités: états, provinces, associations, sociétés, syndicats, etc., . . . dans lesquels il est pourtant impossible d'apercevoir une volonté personnelle distincte de celles de leurs membres et ayant un support individualisé."

[66] For a discussion of the standard theories concerning "juristic persons," see P. W. Duff, *Legal Personality*, etc., *op. cit.*, pp. 206–236.

[67] See Scelle, *op. cit.*, p. 9. "Beaucoup de juristes admettent que la personne collective est en effet fictive mais que, si elle n'a point de réalité corporelle, elle a une réalité juridique, puisque le droit positif la créé et la fait vivre." See also, *ibid.*, p. 11. "Comme toutes les fictions, celle-ci recèle de graves inconvénients d'ordre technique et d'ordre pratique." *Ibid.*, p. 12.

[68] From the methodological viewpoint, Scelle's theory has at least two deficiencies. On the one hand, he arbitrarily identifies the psychological and the legal will; for this problem, see H. Kelsen, *Hauptprobleme der Staatsrechstlehre* (Tübingen,

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J. B. Scott, who starts from similar premises, arrives at similar results when he says: "Indeed, however we may define the state—and the definitions are many and various—we can only pretend that it is a person."[69] But according to that writer, all these doctrines of state personality are fictions for two reasons: first, the state, like any other corporation, is composed of human beings;[70] second, its ultimate purpose is the welfare of these human beings. Thus he says: "If we must have the term 'state,' let us have the state a humanized organization, a creation of human and therefore moral beings, an agency to meet human necessities."[71]

As for the structure of the state, this description seems an oversimplification, because the "will" of the state and the action of the state may differ considerably from the will and action of the individual citizens; nevertheless, only the "declared will," and not the formation of the will, counts, as a rule, in international relations. On the other hand, to deny the state its peculiar corporate character, on the ground that the purpose of the state is "the good life" of the individuals, constitutes a confusion between the structural and the functional approach; for it is certainly conceivable that an "abstract entity" may have real effects.[72] The fact that the true or alleged purpose of the state is to foster the welfare of its individual members seems, therefore, not a sufficiently convincing argument against the corporate character of the state; for to reduce the state to the legal status of its individual members would in the last analysis lead to the denial of "government," and thereby to anarchy. Quite a different proposition, however, is the political question whether a state that disregards the personality of its individual members fulfills the true mission of an ideal state.

(4) Another school of thought proposes to designate the states,

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1923), 2nd ed., p. 72 f., and H. Aufricht, "Die dialektische Methode und der Stufenbau der Rechtsordnung," *Zeitschrift für öffentliches Recht*, Vol. 13 (1933), p. 83 f. On the other hand, Scelle is obviously mistaken if he infers from the fiction-character of a premise that it must be logically worthless. For the contrary view, see H. Vaihinger, *The Philosophy of "As If,"* translated by C. K. Ogden (New York, 1924).

[69] J. B. Scott, *Law, the State, and the International Community* (2 vols., New York, 1939), Vol. 1, p. 25.

[70] See *ibid.*, esp. p. 25, n. 69.

[71] *Ibid.*, p. 26.

[72] See Francisci Suarez, *Tractatus de legibus ac Deo Legislatore* (Londini, 1679), Lib. I, Cap. VI, §2: "illud [read aliud?] est, legem imponi communitati, aliud pro bono, seu utilitate communitatis: nam praeceptum potest imponi particulari personae, & *nihilominus imponi intuitu communis bono.*" Italics inserted.

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in the sense of international law, as the "normal" addressees of international law.[73] In the writer's view, this approach to the problem under discussion is the most adequate one for an exact description of the legal experience; but it must again be emphasized that the structural character of the individual's personality differs widely from that of the states.[74] Yet, the identity of both concepts of legal personality must be seen in the criterion that the state as well as the private individual may be the author or addressee of legal acts which bring about legal effects in the sphere of international law.

In this connection, the term "normal" requires a satisfactory explanation, since it is susceptible of different interpretations. The statement that the states are the normal addressees of international law might mean that the great bulk of international norms are addressed to states. Nevertheless, this statement is correct only in so far as customary and international treaty law is concerned. For the "general principles of law recognized by civilized nations" are, by definition, not addressed primarily to states; otherwise they would be classified under the heading of customary law.[75] Reference to states as the normal persons in international law points furthermore to the peculiar legal structure of the state; in other words, the corporate structure of the state is deemed the "normal" one, while the private individual is seen as an extraordinary legal phenomenon in international legal relations.

Moreover, the attribute "normal" might indicate that individuals become addressees of international law exclusively by virtue

[73] See A. Verdross, *Die Verfassung der Völkerrechtsgemeinschaft* (Wien and Berlin, 1926), p. 117, and A. Verdross, "Règles générales du droit international de la paix," in *Recueil des Cours*, Vol. 30 (1929), pp. 292, 293, 321, 322. See also S. Séfériades, "Principes généraux du droit international de la Paix," in *Recueil des Cours*, Vol. 34 (1930), p. 294. "Les États étant . . . les . . . personnes normaux du droit international." See also M. Siotto Pintor, "Les sujets du droit international autres que les États," in *Recueil des Cours*, Vol. 41 (1932), p. 255 f.

[74] See *supra*, p. 218 f.

[75] See A. Verdross, *Völkerrecht*, *op. cit.*, p. 75: "Diese *allgemeinen Rechtsgrundsätze* mussen von den *völkerrechtlichen* Rechtsgrundsätzen im engeren Sinne klar unterschieden werden, da es sich hier um Grundsätze handelt, die unmittelbar im völkerrechtlichen Vertrags—oder Gewohnheitsrechte enthalten sind, während es sich dort um Rechtsgrundsätze handelt, die weder eine vertragliche, noch eine gewohnheitsrechtliche Anerkennung gefunden haben müssen." See also H. Lauterpacht, *Private Law Sources and Analogies of International Law* (London, 1927), p. 29: " . . . whenever international tribunals have recourse to 'general principles of law' they apply, as a rule, a general principle of private law."

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of special agreements between the states; wherefore it is sometimes argued that the legal personality of the states is in the last analysis derived from the will of the states.[76]

The qualification of the state as the "normal" person in international law might finally mean that there exists quasi-unanimous agreement among the writers on international law that the states are *the* subjects in international law, while only a comparatively small number dissent and propose to use the term "personality" in a broader sense. Whether this status of the dominant doctrine can influence any actual decision depends upon the weight of authority ascribed by a court to "the teachings of the most highly qualified publicists of the various nations."[77]

III. RULES OF INTERNATIONAL LAW ADDRESSED TO PRIVATE INDIVIDUALS

It is assumed that any immediate addressee of a rule of law is a person in legal parlance. From this viewpoint, a private individual must be looked upon as enjoying legal personality under international law if it can be shown that there are international rules addressed to private individuals. Such rules may affect only individuals, but they may also be directed to states. Thus the legal personality of private individuals is to be examined upon the basis of rules which comply with the afore-stated assumption.[78] It is necessary, therefore, to ascertain whether such rules are to be found in international treaty or customary law.

The personal status of the individual is recognized in various international treaties, and the validity of such agreements has been confirmed by the decisions of international and domestic courts. Thus the Permanent Court for International Justice held:

[76] Cf. Verdross, *Die Verfassung der Völkerrechtsgemeinschaft*, p. 156: "Ein Vertrag zwischen Staaten kann also den Einzelnen die Völkerrechtsubjektivität geben und sie ihnen dann wieder nehmen, so dass ihre völkerrechtliche Stellung durchwegs *von ihrem Willen* unabhängig ist." See also below, p. 243.

[77] Cf. Article 38, sec. 4, of the Statute of the Permanent Court of International Justice.

[78] Cf. Verdross, who states that by virtue of treaty-law the individual may become an immediate addressee of international law. In speaking of the legal situation established by virtue of Article 297e of the Treaty of Versailles regarding the rights of individuals to claim before a Mixed Arbitral Tribunal, Verdross writes as follows: "Dadurch werden aber die Einzelnen im Bereiche dieser Ansprüche völkerrechtsunmittelbar." Cf. Verdross, *Die Verfassung der Völkerrechtsgemeinschaft*, *op. cit.*, p. 161. See also J. Spiropoulos, *L'individu en droit international* (Paris, 1928).

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"It may be readily admitted that, according to a well established principle of international law, the *Beamtenabkommen* being an international agreement, cannot as such, *create direct rights and obligations for private individuals*. But it cannot be disputed that the very object of an international agreement, according to the intention of the contracting Parties, may be *the adoption by the Parties of some definite rules creating individual rights and obligations* and enforceable by the national courts."[79]

There seems to be only one point in this statement which is difficult to interpret, namely, the qualifying word "direct." The negation of "direct" rights probably serves the sole purpose of emphasizing that these rules, which are to be addressed to the individual, have been created by mutual agreement between the states. However, after they are established and in operation, these rules are directed to the individuals, or at least to individuals as well as states. Otherwise, the reference in the decision of the court to "rules creating individual rights" would be meaningless.

The minority protection treaties which were concluded under the auspices of the League of Nations also contained provisions regarding the legal status of individuals. Obviously, reference is made to the legal status of individuals when the World Court rules that certain articles of the German-Polish Convention of May 15, 1922, concerning Upper Silesia "bestow upon *every* national the right freely to declare according to *his conscience* and *on his personal responsibility* that he does or does not belong to a racial, linguistic, or religious minority, and to declare what is the language of a pupil or child for whose education he is legally responsible."[80] It seems an adequate interpretation of this decision to construe it as a confirmation of the rights granted to every *individual* national by the treaty.

An analogous legal situation presumably exists with reference to the status of an individual before the Mixed Arbitral Tribunals created under the treaties of Versailles, etc. The exceptional legal position of the individual was expressly recognized by the Anglo-German Mixed Arbitral Tribunal by the following sentence:

"It would, of course, have been possible for the framers of the treaty to

[79] Cf. P.C.I.J., Series B 15, p. 17.

[80] P.C.I.J., Series A/B, No. 40, p. 45. See *ibid.*, p. 32: "The treaty would fail in its purpose if it were not to be considered as an established fact that persons who belonged *de facto* to such a minority must enjoy the protection which had been stipulated." See, moreover, P.C.I.J., Series B 7, p. 20.

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have left these matters in the hands of the governments of the Powers concerned, but they have not done so. The *right* to compensation granted by the treaty *is granted* as compensation *to the national* of an Allied and Associated Power."[81]

An entirely different problem with reference to the legal status of the individual in international law is the procedural right of the individual to appeal to an *international tribunal* without requiring the consent of his state.

It is a generally recognized rule of international law that no citizen is entitled to sue a foreign state before an international tribunal in the absence of any special agreement to the contrary.[82] Moreover, the individual usually is not entitled to act personally in such a case, but has to entrust the matter to the state which takes up his case. In general, the international courts consider such procedure as an action of the state and not of the individual.

"Reference should be made to what the Court has said on several occasions, and in particular in Judgments Nos. 2 and 13, namely, that by taking up a case on behalf of its nationals before an international tribunal, a State is asserting its own right—that is to say, *its right to ensure in the person of its subjects, respect for the rules of international law.* Accordingly, in all cases with which the Court has so far had to deal and in which private interests have been involved, the State's claim has been based upon an alleged breach of an international agreement."[83]

Yet the relationship between state and individual in such action is frequently misconstrued. The circumstance that the state is exclusively entitled to appear as *dominus litis* before an international tribunal certainly involves the exclusion of the private individual as far as procedural acts and measures are concerned; the material or substantive legal effect, however, bears upon the individual; otherwise it would be impossible to assert that the state ensures "in the person of its subjects respect for the rules of international law."

By the provisions of Article 34 of the statute of the World

[81] Cf. Lederer v. German Government, in *Recueil des Décisions des Tribunaux Arbitraux Mixtes* (Paris), Vol. 3 (1924), pp. 762, 768.

[82] Cf. the analogous rules in the Eleventh Amendment to the Constitution of the United States: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State" (1798). See also Chisholm v. Georgia (1793), 2 Dallas 419, and C. Warren, *The Supreme Court in United States History* (2 vols., Boston, 1935), Vol. I, pp. 93 ff.

[83] P.C.I.J., Series A, No. 20, p. 17.

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Court,[84] private individuals were excluded as parties from this tribunal, and the activity of the Court affected states only. This explains why private individuals, even if they had acquired an *immediate right* by virtue of a *treaty*, had no *immediate access* to this *international tribunal*. Here again, confusion frequently occurs between the principles of substantive and procedural law. The fact that the private individual, as a rule, is denied the capacity of a "party" to an international dispute has been over-emphasized in order to show *quod erat demonstrandum* that under international law the "individual" cannot be deemed to have "legal" personality.

However, individuals have received by certain treaties the right to appear before international tribunals on their own behalf. One example, the Mixed Arbitral Tribunals, has been discussed above, as to the effect of this procedure on *material* claims of individuals. As for the access of private individuals to these tribunals, Article 304 (b) of the Treaty of Versailles provided that questions relating to contracts between nationals of the Allied and Associated Powers and German nationals concluded before the coming into force of this treaty "shall be decided by the National Courts in question, to the exclusion of the Mixed Arbitral Tribunal. *The party who is a national of an Allied or Associated Power may nevertheless bring the case before the Mixed Arbitral Tribunal if this is not prohibited by the laws of his country.*"[85]

The first treaty which recognized the access of individuals to international tribunals seems to be the Convention for the Establishment of a Central American Court of Justice,[86] Article 2 of which reads as follows:

"This Court shall also take cognizance of the questions which individuals of one Central American country may raise against any of the other

[84] See *supra*, p. 224. For proposals to admit also individuals to the Court, cf. *Procès verbaux des Séances du Comité* (La Haye, 1920), p. 205 f.; J. Spiropoulos, *L'individu en droit international, op. cit.*, p. 50 f.; and S. Séfériades, "Le problème de l'accès des particuliers à des jurisdictions internationales," in *Receuil des Cours*, Vol 51 (1935), p. 46.

[85] See *supra*, Spiropoulos, p. 25. For cases decided by virtue of Article 304, see *Recueil des Décisions des Tribunaux Arbitraux Mixtes* (9 vols., Paris, 1922–1930). Cf. also R. Bluehdorn, "Le Fonctionnement et la Jurisprudence des Tribunaux Arbitraux Mixtes créés par les Traités des Paris," *Recueil des Cours*, Vol. 41 (1932), pp. 144–146.

[86] Text of the Convention in *American Journal of International Law*, Vol. 2 (1908), p. 231 f. See also Séfériades, "Le problème de l'accès des particuliers," *op. cit.*, pp. 42, 69.

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contracting Governments, because of the violation of treaties or conventions, and other cases of an international character; no matter whether their own Government supports said claim or not, and provided that the remedies which the laws of the respective country provide against such violation shall have been exhausted or that denial of justice shall have been shown."

This Convention was in force for only ten years, and in 1917 it lost its binding character, but the incorporation of Article 2 in an international treaty furnished the instigation for similar proposals which since have been repeated time and again.[87] It should be emphasized, however, that the Central American Convention provided redress only in cases where one citizen wished to sue one of the other, *i.e.*, foreign Central American states; but the Convention created no right for the individual to seek redress before an international court against his own state.[88]

The difficulty of substantiating the proposals regarding the access of individuals to supranational courts are at least twofold: with regard to a claim of an individual against a foreign state, it is easily understandable that states which are not willing to be brought before a court by a co-equal, that is to say, by an independent state, are even less willing to submit to claims by a subject of such co-equal. The mutual independence of states, as well as the relative superiority of the domestic law over the individual, makes the extension of this procedural technique rather improbable.

Quite distinct from the aforesaid legal relationship is the question whether an individual may acquire the right to sue his own state before an international tribunal. Such procedure is legally feasible only by virtue of a special agreement; but if a treaty basis of this kind has been established, there is no reason to deny the right of an individual to invoke an international authority against his state.

[87] The most comprehensive examination of the related problems is to be found in the study of S. Séfériades cited in note 84, p. 238, *supra*, "Le problème de l'accès des particuliers." The generalization of this procedure has been repeatedly recommended by the Institute of International Law. Cf., for instance, the following statement: "Nulle raison ni juridique ni politique ne peut être invoquée, à l'heure actuelle, contre la conception d'un système qui préconiserait la solution de tout différends entre un particulier et une État étranger par un Tribunal international special, constitué d'avance, devant lequel le particulier aurait un accès direct." Cf. Séfériades, *ibid.*, p. 55.

[88] For this distinction, see Spiropoulos, *op. cit.*, pp. 44 and 55. See also Quincy Wright, *Human Rights and the World Order* (New York, 1943), p. 30.

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Therefore, the Upper Silesia Arbitral Tribunal ruled in a case of the aforesaid legal category as follows:

"*Held:* That the Polish contention must be rejected and that the Tribunal has jurisdiction. The Convention conferred in unequivocal terms jurisdiction upon the Tribunal irrespective of the nationality of the claimants, and the terms of the Convention being clear, it was unnecessary to add to it a limitation which did not appear from its wording."[89]

There is thus evidence in treaty law of rules immediately addressed to individuals which have been recognized by international as well as domestic courts. Yet, whether there are rules of customary international law which are directed to individuals is an even more controversial question.

One problem of general and actual importance arises in connection with the legal determination of the "nationality" of individuals. The question whether or not the rules concerning nationality belong exclusively to the sphere of domestic jurisdiction of individual states, or whether there are certain rules of customary international law which can be held limitations of this competence, was discussed at length in 1930 at the Hague Conference for the Codification of International Law.[90] As to this basic problem, the second Report submitted to the Council of the League of Nations by the preparatory committee for the Codification Conference contained the following statement:

"Questions as to its nationality are within the sovereign authority of each state. Any question as to the acquisition or loss by an *individual* of a particular nationality is to be decided in accordance with the law of the state whose nationality is claimed or disputed. *The legislation of each state must nevertheless take account of the principles generally recognized by states.* These principles are, more particularly:

"As regards acquisition of nationality: bestowal of nationality by reason of the parents' nationality or of birth on the national territory, marriage with a national, naturalization on application by or on behalf of the person concerned, transfer of territory;

"As regards loss of nationality: voluntary acquisition of a foreign nationality, marriage with a foreigner, *de facto* attachment to a country ac-

[89] See Steiner and Gross v. Polish State, Upper Silesian Arbitral Tribunal, March 30, 1928, digested in McNair-Lauterpacht, *Annual Digest of Public International Law Cases*, 1927–1928 (London, 1931), Case No. 188.

[90] For material related to this conference, see *American Journal of International Law*, Supplement to Vol. 24 (1930).

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companied by failure to comply with provisions governing the retention of the nationality, transfer of territory."[91]

Although these principles were never incorporated in any general international treaty concerning nationality questions, as originally intended by the Hague Codification Conference, the report of the preparatory committee doubtless represents an express acknowledgment by outstanding authorities in the field of international law that there are general principles of customary international law which affect the legal status of the individual as far as his citizenship is concerned. The same opinion was accepted, in an even clearer form, by the multilateral Convention on Certain Questions Relating to the Conflict of Nationality Laws (April 12, 1930),[92] Article 1 of which reads as follows: "It is for each state to determine under its own law who are its nationals. This law shall be recognized by other states *in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.*" (Italics supplied).

With respect to statelessness, on the other hand, customary international law usually determines such legal capacity, or better incapacity, in a negative way. The stateless person, for instance, has no claim to ask for diplomatic protection abroad, and may be deprived of the right to settle in any state; or if admitted to a state, he might be excluded from the right to acquire citizenship by naturalization, etc.[93] But the treatment of stateless persons in certain international treaties proves also in a positive manner that the legal personality of individuals might be recognized even in the absence of any direct tie between an individual and his state. If the minority protection treaties of 1919, etc., provided in certain cases an equal protection before the law for citizens and residents alike, irrespective of the citizenship of the residents, this too should be deemed an evidence for the legal individuality of a stateless person.[94] Any theory which denies the international legal personality of the indi-

[91] *Ibid.*, p. 10. Italics supplied.

[92] This convention has been ratified by five states: Great Britain, Canada, China, Poland, and Sweden. Brazil, Norway, and Monaco adhered.

[93] For the legal status of stateless persons, cf. J. P. A. François, "Le problème des apatrides," in *Recueil des Cours*, Vol. 53 (1935), p. 288 f.

[94] *Ibid.*, p. 319. See also the reference to Article 5 of the Treaty of Berlin of July 13, 1878, and the analogous provisions referred to by François, *ibid.* See, too, the *Special Protocol Concerning Statelessness* drafted by the Hague Codification Conference, 1930, *American Journal of International Law*, Supplement to Vol. 24 (1930), p. 211 ff.

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vidual is of necessity unable to grasp this problem. It is easy to show, however, that in a time of mass population movements, this question is not a merely academic one, but that an erroneous or narrow-minded theoretical approach to such problems may also have detrimental effects in practice.[95]

A theory which insists upon the thesis that all individual rights are derived from statehood under international law—in other words, that all individual rights are indirect rights[96]—will never be able to explain the status of statelessness in an adequate manner, since the legal position of a stateless person, or even its legal incapacity in various respects, is inherently conditioned by its separation from any allegiance to any state.

Other frequently cited illustrations showing the validity of customary international rules concerning private individuals are the status of "piracy" and the legal position of the "blockade runner" under international law. There seems to be general agreement at least on one criterion related to the status of the "pirate" in all the conflicting attempts to furnish an adequate definition of "piracy,"[97] namely, the circumstance that the pirate acts "without authorization from the government of any state," or, in other words, as a private individual.[98] Whenever rules of international law exist which entitle one independent state to proceed against a pirate, such rules are simultaneously addressed to an independent state, affected by such act of piracy, and to an individual or to individuals who commit such acts. To deny this "legal" status of the pirate can be attempted only by a rather artificial argumentation. The status of the "blockade runner," which is also frequently referred to as a matter in point, cannot be dealt with here in detail.[99]

[95] For the interconnection between the inability of the traditional theory to solve the problem of statelessness, even in theory, and the denial of international personality to an individual, see François, *ibid.*, p. 315 f., esp. p. 318. [96] See *supra*, n. 236.

[97] For a thorough presentation of the various problems involved in piracy, see *Research in International Law* (Harvard Law School, Cambridge, 1932); *American Journal of International Law*, special supplement to Vol. 26 (1932), pp. 739–1013.

[98] Cf. Report of the Sub-Committee of the League of Nations Committee of Experts for the Progressive Codification of International Law, League of Nations. Document C. 196, M. 70, 1927, V, pp. 116-117. "According to international law, *piracy consists in sailing the seas for private ends without authorization from the government of any state* with the object of committing depredations upon property or acts of violence against persons."

[99] Cf., for this problem, *Research in International Law* (Harvard Law School, Cambridge, 1932); *American Journal of International Law*, special supplement to Vol. 33 (1939), p. 619 f.; and J. L. Kunz, *Kriegsrecht und Neutralitätsrecht* (Wien, 1935), p. 140 f., esp. p. 144.

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On the whole, the denial of legal personality to individuals in international law may be compatible with a doctrine which tends to reserve this qualification exclusively to independent states, but the various efforts to refute this qualification to the individual are mostly inconsistent in themselves. In the first place, it has been denied that rules of customary international law now exist which are addressed to individuals, and it has been inferred from this premise that no such rules of international law can be established at all. It is easily to be shown that such reasoning is based upon an arbitrary restriction of the generally accepted principles regarding the sources of international law.[100] Such an assertion would be justified only if evidence could be furnished of a rule of law which expressly denied the legal personality of individuals, and which would also preclude any international treaty regarding individuals. In the second place, the legal personality of the individual has been denied on the ground that the individual has no access to international tribunals. Irrespective of the fact that this rule ignores international treaties which have granted such rights to individuals, this statement is obviously based upon confusion between the rules of procedural and substantive law, in those cases where the state appears before an international tribunal in order to defend rights on behalf of its subjects.[101] In the third place, the individual in his international relations has been characterized as dependent upon his state, by saying that substantive rights granted to the individual are exclusively created by treaties between independent states, wherefore the rights of the individual have no "original" character but are "derived" only. This approach, however, confuses the persons engaged in the establishment of such rules with the ultimate addressees of these rules.

The foregoing analysis permits the following conclusions: (1) Those doctrines which tend to reserve international personality exclusively for states must now be reëxamined with respect to legal experience. (2) Although states are to be considered the "normal" persons in international law, private individuals and supranational persons may likewise enjoy legal personality. (3) Although it can be maintained that the private individual has a claim to legal personality under international law, the different legal qualifications of the "state" and the "private individual" give rise to characteristic differences in their legal status under international law.

[100] See article 38 of the Statute of the Permanent Court of International Justice.

[101] See *supra*, n. 83.

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THOMAS PAINE—DEMOCRAT

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These may be "the times that try men's souls," as President Roosevelt recently told the nation, but they may also be the times when free and courageous men may push forward toward the better society of which Thomas Paine dreamed when he pleaded with the colonists for unity in the cause of freedom. When Paine first wrote those words 165 years ago, America had an opportunity to break away from the tyranny of Europe. But Paine was not content to win a war of independence for America alone. Like many today, he talked of world revolution aimed at the tyranny of the few over the many. He, too, argued that men—all men—should have an equal opportunity to shape their own destinies and the destiny of the world in which they found themselves. In an era when men are fighting to preserve and extend a heritage of freedom, it would be well to reëxamine the ideas of Paine, whose writings inspired men of his day in America, in England, and in France to work and to die that they might be free.

The examination will be based primarily on the pamphlets and articles written after 1791; for, as Vernon L. Parrington has said, "the maturest elaboration of Paine's political philosophy is found in *The Rights of Man*,"[1] which was written in that year. It is only in the book mentioned that Paine attempted to set down in any detail his beliefs on the general nature of the state and government. Later pamphlets and essays served to expand and elaborate the reasons for particular conclusions stated in his reply to Burke's *Reflections on the Revolution in France*. Because he was, as Charles E. Merriam suggests, primarily an "agitator" whose influence was "popular rather than scientific,"[2] Paine was not as concerned with writing a complete philosophy as in securing results in specific instances. However, in his many articles on immediate issues after 1791 he remained consistent with the general position adopted in his major work.

[1] Vernon L. Parrington, *Main Currents in American Thought*, Vol. I, p. 334.

[2] C. E. Merriam, "Thomas Paine's Political Theories," *Political Science Quarterly*, Vol. XIV, p. 402 (Sept., 1899). See also Max Lerner, *It is Later Than You Think*, p. 109. Lerner calls Paine a "demagogue," that is, one of those Americans who were "good artists in majority politics."

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As a democrat—and in his later years he was a democrat[3]—Paine believed that sovereignty ought to reside in the people, that decisions of the sovereign ought to be made by the numerical majority, that all members of the society ought to have equal political rights with an equal opportunity to determine the decisions of the majority, and that some means ought to be provided whereby the majority may make its decisions known.[4]

The remainder of this essay will consider the political doctrines of Paine with respect to each of these items of his democratic creed.

I. POPULAR SOVEREIGNTY

In order to discover who ought to possess sovereignty, Paine posited a state of nature. This state of nature was never a prehistoric age when men lived apart from each other as isolated individuals. Man naturally came into society because he was a friend of man,[5] and because he could not as well satisfy his wants if he remained apart from other men.[6] A state of nature, then, was any society in which there was no regularly constituted, functioning government. Thus he referred to the members of the National Assembly of France as "delegates of the nation in its *original* character; future assemblies will be delegates of the nation in its *organized* character."[7]

All governments must either grow "*out* of the people or *over* the people."[8] Governments which "grow out of the people" are based upon "the common interest of society and the common rights of man."[9] They are set up by a compact among all the members of society, "each in his personal and sovereign right . . . and this is

[3] Some of the undemocratic features of Paine's earlier writings will be referred to briefly to indicate the historical development of his thinking.

[4] For a full discussion of the belief of a majority-rule democrat, see the excellent discussion in Willmoore Kendall, *John Locke and the Doctrine of Majority-Rule*, esp. pp. 24–38.

[5] *The Rights of Man*, *Writings of Thomas Paine* (M. D. Conway, ed.), Vol. II, p. 388.

[6] *Ibid.*, pp. 406–407. See also *Common Sense*, Vol. I, p. 70. Here Paine spoke of the possibility of men attempting to live as individuals, but soon joining each other when they realized that they could live better by a division of labor.

[7] *Ibid.*, p. 311. Italics are Paine's. He also referred to the United States as being in a state of nature between 1775 and the time of the adoption of the Articles of Confederation. See Vol. II, p. 407.

[8] *Ibid.*, pp. 309, 310. Italics are Paine's.

[9] *Ibid.*, p. 308.

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the only mode in which governments have a right to arise, and the only principle on which they have a right to exist."[10] Governments which are "over" the people arise through usurpation and are based upon superstition or force. They may be called governments of priestcraft or of conquerors.[11]

Because all men enter into the compact, "sovereignty, as a matter of right, appertains to the Nation only and not to any individual; and a Nation has at all times an inherent indefeasible right to abolish any form of government it finds inconvenient, and *to establish such as accords with its interest, disposition, and happiness.*"[12] The constitution or compact (Paine uses the terms synonymously) antedates government and is supreme over it. Government cannot be a partner to the compact which establishes it, and therefore cannot alter the terms of the pact.[13] Government may "control men only as individuals," but men collectively control both the terms of the compact and the powers of government.[14]

The nation may delegate power to representatives in a legislature, who hold that power as a trust as long as the people wish and no longer. "But the right of the Nation is an original right as universal as taxation. The Nation is the paymaster of everything, and everything must conform to its general will."[15] A mixed constitution, which divides authority between the representatives of the people and groups which are not responsible to the nation, is contrary to the nature of legitimate government because the irresponsible elements may control the responsible representatives.[16]

[10] *Ibid.*, p. 309.

[11] *Ibid.*, p. 308. See also *ibid.*, pp. 277–281, 310.

[12] *Ibid.*, p. 385. Italics are mine. See also "Address to the Addressers," Vol. II, p. 68. The term "nation" as used by Paine always refers to all the citizens of a particular country.

[13] *Ibid.*, pp. 309–310. This does not mean that Paine believed in judicial review. See section on Popular Consultation.

[14] *Ibid.*, p. 436.

[15] *Ibid.*, p. 361. Italics are mine. See also p. 238, where Paine argues that an elective body no longer responsible to the people is as despotic as any king who usurped power originally. The phrase "as universal as taxation" is to be found frequently in Paine's writings. Paine himself did not believe that voting should be based upon the payment of taxes (see section on Political Equality), but was quite willing to use the term for persuasive purposes. He usually went ahead to explain that everyone pays taxes in some form, and therefore acceptance of the phrase necessitates acceptance of the notion of political equality.

[16] "Thomas Paine's Answer to Four Questions on the Legislative and Executive Powers," Vol. II, pp. 238–239.

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Sovereignty inheres in a people, and they cannot relinquish it either for themselves or for posterity. Paine denied Burke's contention that the people of England must continue to be ruled by a king because a Parliament in 1688 had pledged their obedience to William and Mary and their children forever.[17] The rule of the living by the dead is the worst of all tyrannies. A compact which binds posterity to a particular ruler and deprives it of political rights is similar to a will in which A bequeaths the property of B to C. It is both unjust and absurd.[18]

Representative government (i.e., democracy) based upon popular sovereignty is "*nothing more than a national association acting on the principles of society.*"[19] It is concerned with the "management of the affairs of the nation,"[20] and is for the "good of the nation and not for the emolument or aggrandisement of particular individuals."[21] It is, then, a republic, established for the "good of all, as well individually as collectively."[22]

In his earlier writings, Paine took exception to the doctrine of popular sovereignty in so far as it applied to certain kinds of economic contracts. Neither the legislature nor the people had the right to revoke certain kinds of economic contracts agreed to by a preceding legislature and another party.[23] If both the government

[17] *Rights of Man*, Vol. II, pp. 276–277, 365–366.

[18] *Ibid.*, p. 366.

[19] *Ibid.*, p. 411. Italics are Paine's. For similar definitions, see also pp. 443, 446. In the latter passages, Paine did not include the last phrase, "acting on the principles of society." It will be noted that his definition makes no distinction between the "state" and "government," or between the "state" and "society." The word "state" is never used by Paine except to describe the "thirteen American states." As we noticed earlier, a democratic state differs from society only because it is organized. In *Common Sense*, Vol. I, p. 69, Paine distinguished between the origin of society and of the state. The former arose because of the needs of man, the latter because of his wickedness. The duty of the state was to preserve law and order. Not until he identified representative government with organized society was Paine able to give the state the positive function of promoting the common good.

[20] *Ibid.*, p. 385.

[21] *Ibid.*, p. 397.

[22] *Ibid.*, pp. 421–422, 443. Republic, said Paine, came from the word *res-republica*, meaning public affairs. A republic, then, does not describe a form of government, but the purpose of government. He added, however, that representative government is the only kind which actually deals with public affairs or the good of the nation.

[23] "Dissertation on Government; the Affairs of the Bank; and Paper Money," Vol. II, p. 147. If the people or government break a contract, it is contrary to the terms of the original compact in which men "renounced as despotic, detestable and unjust, the right of breaking and violating their engagements, contracts and compacts with, or defrauding, imposing or tyrannizing over each other."

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and the other party agreed to revise or discard the contract, then, and only then, could it be modified or revoked. Disputes arising out of these contracts must be submitted to a court for a decision.[24] No question could be decided by either party alone.[25] Yet, even in this essay—written before Paine had completely worked out his political philosophy—he argued that contracts must have a limited duration. He suggested thirty years. To grant a charter "forever" can have no meaning, because "our forever" ends when the "forever" of our children begins, and we can no more bind our children to economic contracts than we can set up a government for posterity.[26]

No such limitations upon popular sovereignty were recognized in *The Rights of Man* written five years later. Paine did not consider economic contracts except in passing, but he left no doubt about his beliefs concerning political charters granted by the government. In demanding the abolition of the English "rotten boroughs," he discussed the relationship of charters to equality of rights and popular sovereignty.

> "Rights are inherently in all the inhabitants; but charters, by annulling those rights, in the majority, leave the right by exclusion in the hands of the few. If charters were constructed so as to express in direct terms *"that every inhabitant, who is not a member of a corporation, shall not exercise the right of voting,"* such charters would, in the face, be charters not of rights but of exclusion. . . . They do not give rights to A, but they make a difference in favour of A by taking the right of B, and consequently are instruments of injustice."[27]

In his last political essay, written fourteen years after *The Rights of Man*, Paine denied his earlier contention in the *Dissertation on Government* that certain economic contracts could not be annulled by a legislature even if the contracts were contrary to the expressed will of the people. He admitted that if one legislature could pass an act which was beyond the power of succeeding legislatures to revise, it would be contrary to the "very intention, essence, and principle of annual elections."[28] He therefore suggested that acts which require permanency—"sales or grants of lands, acts of incorporation, public contracts with individuals or companies beyond a certain amount"—should be proposed by one legislature and adopted by a

[24] *Ibid.*, p. 146. [25] *Ibid.*, p. 148. [26] *Ibid.*, pp. 164–166.
[27] *The Rights of Man*, Vol. II, pp. 465–466.
[28] "Constitutions, Governments, and Charters," Vol. IV, p. 468.

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second legislature after the people had expressed their desires on the measure through an intervening election.[29] Apparently (the essay is not entirely clear on this point)[30] Paine believed that his proposal would give some degree of permanency to those kinds of economic contracts mentioned above, even though it was within the power of the people to change or annul the contracts (presumably by following the same procedure by which the contracts had been adopted originally). If this interpretation is correct, Paine had accepted in the sphere of economic contracts the position which he had argued in *The Rights of Man* in connection with political contracts. The one limitation upon popular sovereignty—that of forcing the people to wait a year before agreeing to changing a contract—is too minor to constitute any real exception to the doctrine.

It has been contended by at least one writer, however, that Paine held that rights to property are inalienable, that they constitute a limitation upon sovereignty of the people, and that government was instituted for the security and benefit of property-owners.[31] But an analysis of Paine's later works (i.e., after 1791) indicates quite clearly that this is not the case, and that Paine, with the minor exception noted above, believed fully in popular sovereignty. He argued that the only inalienable rights which men possess are the natural rights that belong to them by right of their

[29] *Ibid.*, pp. 468, 469.

[30] In the essay, Paine argued that certain acts, i.e., the contracts mentioned, differ from ordinary laws which may be repealed at any time. He argued that these special acts required permanency without being clear what he meant by "permanency." However, he spoke of the value of elections in insuring just contracts because "it is always to the interest of a much greater number of people in a country, to have a thing right than to have it wrong, [and therefore] the public sentiment is always worth attending to. It may sometimes err, but never intentionally, and *never long*." The last sentence indicates that the people will be allowed to correct their "errors," even at the expense of permanency. He also argued that the people of New York had "vetoed" the specific contract in question when they defeated the legislators who enacted the measure.

[31] Joseph Dorfman, "The Economic Philosophy of Thomas Paine," *Political Science Quarterly*, Vol. 53, pp. 372–386 (Sept., 1938).

On the other hand, see V. L. Parrington, *op. cit.*, Vol. I, p. 139, where it is suggested that Paine may well have believed in a socialized order, but that his desire to secure a measure of relief from intolerable conditions prevented him from bluntly stating his full position. Also see C. E. Merriam, *op. cit.*, esp. pp. 397, 400, where he remarks that Paine argues that the state should not interfere much in the affairs of business, but that he also suggests a number of instances when government ought to regulate economic conditions even more stringently than they were then regulated.

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existence,[32] namely, freedom of religion,[33] freedom of discussion,[34] and the right of citizenship, with its appendage—the vote.[35] Possession of these natural rights depends only upon the willingness of a man to recognize the claim to the same right by other men. Rights and duties are reciprocal, and a statement of rights, by its nature, is also a statement of duties.[36] Even the right to vote, which has no "equivalent counterpoise," may be taken away from those who would deprive others of that right.[37]

Property is frequently spoken of as a right, but only on one occasion was it spoken of as an inalienable right, and then by implication. In *The Rights of Man*, Paine gave general approval to the first three articles of the "Declaration of the Rights of Man and Citizens,"[38] in which property was referred to as one of the "natural and imprescriptable rights of man."[39] But elsewhere in the same essay he commended the action of the French Republic in selling the lands of the church to pay the national debt,[40] and he also proposed a progressive income tax to raise money for the aid of the poor, aged, newly-married, etc. The tax was to become confiscatory for incomes above 20,000 pounds.[41] This would be difficult to reconcile with an inalienable right to property.

The relationship of property to society is stated in some detail in *Agrarian Justice*. Land was originally held in common, but with the development of cultivation this became impractical. Improvement resulting from cultivation cannot be separated from the land itself. Nevertheless, all members of society deserve some remuneration from the land, even though some do not occupy any of it. Those who live upon the land, therefore, should pay ground-rents or an inheritance tax of ten per cent into the national treasury for distribution among the members of the nation.[42] A portion of per-

[32] *The Rights of Man, op. cit.*, Vol. II, p. 306. Paine sometimes spoke of these as "personal rights" or "rights of the mind."

[33] *Ibid.*, pp. 307, 325–326, 328. Religious freedom, he said, was essential to all other rights.

[34] *Ibid.*, pp. 397, 330. Also see "Address to the Addressers," Vol. III, p. 68.

[35] *Ibid.*, pp. 328, 361. Also see "Dissertation on First Principles of Government," Vol. III, p. 265, and *Agrarian Justice*, Vol. III, p. 325.

[36] *Ibid.*, pp. 354–355.

[37] "Dissertation on First Principles of Government," Vol. III, p. 267.

[38] *Rights of Man*, Vol. II, p. 355.

[39] Quoted in *Rights of Man*, Vol. II, p. 351.

[40] *The Rights of Man*, Vol. II, p. 380. [41] *Ibid.*, pp. 484–500.

[42] *Agrarian Justice*, Vol. III, pp. 330–332.

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sonal property also should be given "back to society from whence the whole came," because "any accumulation beyond that which a man's own hands could produce" is made possible by his living in society.[43]

Paine advised those who owned property to make it "productive of a national blessing,"[44] because only then could the owners be assured of retaining even a part of their possessions. The advice was given, if we can judge from the general tenor of his works, not out of any love for property and its "rights" as such, but because he held a functional concept of property. His proposal of high taxes on lands and personal property would, he thought, peacefully relieve misery and provide all members of society with at least the material essentials of life. Failure to give the people the necessities would mean the expropriation of property by violence, when "wealth and splendour, instead of fascinating the multitude, excite emotions of disgust . . . [and] when the ostentatious appearance it makes serves to call the right of it in question."[45] Government, not private individuals, should put the functional concept of property into practice, because private charity cannot accomplish the job effectively.[46]

If our summary of Paine's attitude toward property is accurate, it is difficult to accept a recent interpretation of his economic ideas which argues that his concern in *Agrarian Justice* was the protection of property against the caprice of the multitude; and that he urged property-owners to give up some of their holdings because he wished them to save the rest and not because he wished to improve the material circumstances of men.[47] The more probable explanation of his urging owners to give up part of their holdings is that he acted like some present-day reformers who attempt to persuade business men that it is to their own interest to have trade unions organized within their industries. The argument, whether valid or invalid, is not made out of any desire to aid business men but to aid labor. It is no easier to accept the statement by the same author that both Paine and Hamilton were seeking the same economic objective.[48] To argue that Paine and Hamilton believed in the same sort of economic organization has no more meaning than to argue that President Roosevelt and Henry Ford both believe in

[43] *Ibid.*, p. 340. [44] *Ibid.*, p. 341. [45] *Ibid.*
[46] *Ibid.*, pp. 337–338. [47] Dorfman, *op. cit.*, p. 380. [48] *Ibid.*, p. 386.

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capitalism. It is probably true that neither Paine nor Hamilton would have taken away all property from its owners, but at this point the similarity ceases. Paine wished property to serve all in society; Hamilton wished the state to preserve property for those who owned it, and certainly not to take it from them to help others.[49]

Parrington is right when he says that Paine believed that property rights were "limited by social needs,"[50] and that the people were to determine those needs because there can be for Paine "no law superior to this popular will expressed through the majority."[51] Although he spoke of the "rights of property," Paine emphasized that they were rights "*not of the most essential kind*,"[52] and could not be compared with, e.g., the right to vote.[53] If the rights of property are inferior to the natural rights, it seems reasonable to assume that they are not inalienable rights and that they may be regulated through the use of the natural rights.

II. MAJORITY RULE

That the sovereignty of the people should be expressed through the decision of the majority, Paine never doubted in his later writings.[54] So convinced was he that majority-rule was the only reasonable method of making decisions in a representative society that he found it necessary to mention "majority" only briefly in *The Rights of Man*. His belief in the efficacy of majority-rule is expressed in a description of the ratification of the American constitution by the Massachusetts convention, where "the majority was not above nineteen or twenty in about three hundred members; but such is the nature of representative government that it quietly decides

[49] See Dixon Wecter, "Hero in Reverse," *Virginia Quarterly Review*, Vol. XVIII, 243–259 (Spring, 1942). Wecter tells of the hatred for Paine among the conservatives in his day because of his economic beliefs. If he and Hamilton agreed on economic ideas, Hamilton and his supporters were curiously unaware of the similarity. See esp. pp. 244, 245, 248.

[50] Parrington, *op. cit.*, Vol. I, p. 338.

[51] *Ibid.*, p. 333. We need not follow Parrington's speculation that Paine would have carried his arguments to a more radical conclusion, had he not confined his writing to immediately attainable objectives. See p. 339.

[52] "Dissertation on First Principles of Government," Vol. III, p. 269. Italics are mine.

[53] *Ibid.*, p. 267.

[54] In *Common Sense*, Vol. I, p. 97, Paine suggests that Congress might pass acts by a vote of three-fifths of the members "in order that nothing might pass into a law which is not satisfactorily just." In no other pamphlet does Paine suggest rule by any number other than a simple majority.

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all matters by majority."[55] "If it prefer a bad or defective government to a reform or chuse to pay ten times more taxes than there is any occasion for, it has a right so to do; and so long as the majority do not impose conditions on a minority, different from what they impose upon themselves, though there may be much error, there is no injustice."[56] He carried the idea of decisions by majority vote into the legislature. He objected to a bicameral legislature because "it always admits of the possibility, and is often the case in practice, that a minority governs a majority, and that in some instances to a degree of great inconsistency."[57]

A more complete statement of his belief in majority-rule is to be found in "Dissertation on First Principles of Government," which was written in support of his arguments in *The Rights of Man:*

"In all matters of opinion, the social compact, or principle by which society is held together, requires that the majority of opinions become the rule for the whole, and that the minority yield practical obedience thereto. This is perfectly conformable to the principle of equal rights: for, in the first place, every man has a *right to give an opinion* but no man has a right that his opinion should *govern the rest.* In the second place, it is not supposed to be known beforehand on which side of any question, whether for or against, any man's opinion will fall. He may happen to be in a majority upon some questions, and in a minority upon others; and by the same rule that he expects obedience in the one case, he must yield it in the other. . . . The principle of equal rights has been repeatedly violated and that not by the majority but by the minority, and *that minority has been composed of men possessing property, as well as of men without property; property, therefore, even upon the experience already had, is no more a criterion of character than it is of rights.* It will sometimes happen that the minority are right, and the majority are wrong, but as soon as experience proves this to be the case, the minority will increase to a majority, and the error will reform itself by the tranquil operation of freedom of opinion and equality of rights. Nothing, therefore, can justify an insurrection, neither can it ever be necessary where rights are equal and opinions free."[58]

[55] *Rights of Man,* II, p. 434.

[56] *Ibid.*, p. 509. See also "Constitutional Reform," Vol. IV, App. G., p. 465.

[57] *Ibid.*, p. 444. For a more detailed criticism of bicameralism, see "Thomas Paine's Answer to Four Questions on the Legislative and Executive Powers," Vol. II, pp. 241–244.

[58] "Dissertation on First Principles of Government," Vol. III, pp. 273–274. Italics are Paine's.

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Political parties or factions around which majorities may rally at election time received little attention from Paine. He apparently accepted the fact that parties arise wherever there are representative institutions. Usually he mentioned parties only in passing, and then without comment. Once he declared that the only safeguard against parties ruling in their own interest is a constitution to which they are subject. Even here, it will be noted, he does not condemn parties as such, but only suggests that they must not be supreme. On a later occasion he expressed the belief that the "fate of every party is decided by its principles," because a majority will not long support a party with a poor or wrong program. Perhaps it was Paine's wider experience with political factions in England and France that prevented his falling into the then prevalent American notion that all parties necessarily subvert the will of the people.[59]

"The majority are, politically, the people,"[60] not only because a society of equals ought to be ruled by a majority, but also because any attempt of a minority to govern "will unite them (i.e., the majority) in a common interest against the government and against those who support it; and *as the power is always with the majority, they can overturn such a government and its supporters whenever they please.*"[61] Having taken part in two revolutions which displaced kings, Paine failed to see that inertia might well prevent a disorganized majority from ruling in the face of a determined, disciplined minority. Nor did he foresee that the day would come when minorities backed by armies *can* control majorities—the mere strength of numbers meaning little in the face of modern military forces.[62]

Because governmental action needs the support of the people, minorities ought not rule even when they are certain that their decisions are correct.[63] If power is not lodged in the majority of an inclusive electorate, there is no logical stopping point short of one-

[59] *Ibid.*, p. 277; "To Citizens of the United States" (no. 5), Vol. III, p. 405. For other comments on parties in Paine's later writings, see *Rights of Man*, Vol. II, pp. 278, 468; "The Eighteenth Fructidor," Vol. III, p. 347.

[60] See "Letter to Samuel Adams, January 1, 1803," Vol. IV, p. 207.

[61] "Dissertation on First Principles of Government," Vol. II, p. 266. Italics are mine. See also *The Rights of Man*, Vol. II, pp. 428, 509.

[62] "Letter to the Citizens of the United States" (no. 3), Vol. III, p. 392. In this article, Paine did express some doubt of the ability of majorities to control minorities when he spoke of "the doubtful contest of civil war."

[63] See *The Rights of Man*, Vol. II, p. 514, n.

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man rule.[64] And it is impossible for one man to be so wise in all things that he can instruct the people and make their decisions.[65]

Unanimous agreement would be, he conceded, the preferable method of making decisions. But such is the nature of man that common consent will be consistently given only to the proposition that the majority should rule. Society will give the power to the majority because of the absolute necessity that decisions be made, and because "it is a mode of decision derived from the primary original right of every individual concerned; *that* right being first individually exercised in giving an opinion, and whether that opinion shall arrange with the minority or the majority, is a subsequent accidental thing that neither increases or diminishes the individual original right itself."[66]

III. EQUALITY

Our discussion of Paine's belief in majority-rule has also indicated his belief in equality of political rights. As in the case of his discussion of popular sovereignty and majority-rule, he conducts his argument on two levels. He maintains that equality springs from ultimate principles or natural law, and also insists that equality should be granted for practical reasons, saying that those who have the power to bring about equality should do so for their own interest. As in all such arguments, he places greatest emphasis on the "justice" of the proposition.

The basis of equality is to be found in the origin of man. When he came from the hand of his Maker, his "high and only title" was man.[67] All accounts of the beginning of man, although differing from all others in many particulars, are agreed on one point, "*the unity of man;* by which I mean that all men are of *one degree,* and consequently that all men are born equal, and with equal natural right, in the same manner as if posterity had been continued by *creation* instead of generation . . . ; and consequently every child born into the world must be considered as deriving its existence from God. The world is as new to him as it was to the first man that

[64] "Dissertation on First Principles of Government," Vol. III, pp. 271–272.

[65] *The Rights of Man,* Vol. II, pp. 367, 416–417. See also "Dissertation on Government; etc.," Vol. II, p. 135.

[66] "Letter Addressed to the Addressers, etc.," Vol. III, pp. 91–92. Italics are Paine's.

[67] *The Rights of Man,* Vol. II, p. 303.

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existed, and his right in it is of the same kind."[68] There is "but one species of man, [and therefore] there can be but one element of human power; and that element is man himself."[69]

Upon leaving society in its "original" state to become a part of society in its "organized" state, every individual, "each in his own personal and sovereign right, *entered into a compact with each other to produce a government* . . . ";[70] therefore, each "is a member of the Sovereignty"[71] with equal political rights based upon his natural rights.[72] That the rights of man in society "shall be equal is not a matter of opinion but of right, and consequently of principle."[73] Any limitation upon equality would be admitting that some men have property in others.[74]

"The right of voting for persons charged with the execution of the laws that govern society is inherent in the word Liberty, and constitutes equality of personal rights."[75] If the right to vote is "attached to inanimate matter,"[76] such as place of residence, property, or payments of direct taxes, "the dignity of the suffrage is thus lowered . . . in placing it with an inferior thing. . . . It is impossible to find an equivalent counterpoise for the right of suffrage, because *it alone* is worthy of its own basis, and cannot thrive as a graft, or an appendage. . . . "[77] A man should lose his right to vote only if he attempts to exclude another from voting. By his attempt, he automatically forfeits his claim to the right by refusing to recognize a similar claim on the part of others.[78]

On the practical side of the question, Paine argued that it was unwise to limit the suffrage to those with great property-holdings because this would, by excluding the majority, unite them, and they would seize control anyway.[79] If the suffrage were based upon

[68] *Ibid.*, pp. 304–305. Italics are Paine's. He cites the Mosaic account of the creation which says that God made man in his own image, distinguishing between the sexes, "but no other distinction is implied."

[69] *Ibid.*, p. 385. [70] *Ibid.*, p. 309. Italics are Paine's.

[71] *Ibid.*, p. 386.

[72] "Letter Addressed to the Addressers, etc.," Vol. III, pp. 91–92. See also, "Constitutional Reform," Vol. IV, App. G., p. 465.

[73] "Dissertation on First Principles of Government," Vol. III, p. 273.

[74] *The Rights of Man*, Vol. II, p. 278.

[75] *Agrarian Justice*, Vol. III, p. 325.

[76] "Letter Addressed to the Addressers, etc.," Vol. III, p. 88.

[77] *Agrarian Justice*, Vol. III, p. 325.

[78] "Dissertation on First Principles of Government," Vol. III, pp. 265, 267.

[79] *Ibid.*, p. 266.

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a small amount of property, it would be based upon accident.[80] To associate the vote with property in any fashion would be to place the right on the most precarious of bases, because men are constantly gaining and losing property—frequently through no fault of their own. Men would, if property were a criterion, lose not only property but the right to vote when it "would be of most value."[81] To limit the vote to those who pay taxes would be meaningless, because all men pay taxes in some form.[82] If the payment of a direct tax were required, it would be dangerous because corrupt politicians could buy elections by paying the poll taxes for those who could not afford the fee.[83] If exceptions to the property qualifications are made in favor of those who have served in the army, they will fail in their purpose, because the soldier will not fight harder, realizing that his children cannot have the right which he is acquiring at the risk of his life.[84] The wisest criterion for voting is age, because "nothing but dying before that time can take it away."[85]

Nor is it wise to grant special representation to particular interests, because they will legislate for their own welfare to the detriment of the rest of society. Besides, what right have they "to a distinct and separate interest from the general interest of the nation?"[86] To discriminate against any group is to "make poverty their choice."[87] A wise man of property, Paine said, recognizes that security of his interest rests upon equal political rights for all, because the people never injure property if they are accorded equality of rights.[88] Property is not safe, however, when it is employed

[80] *Ibid.*, p. 267. Paine suggested that it might well be that a man's right to vote would depend upon such a thing as the birth of a mule. In that case, he wonders who should have the vote—the mule or the man. See Dorfman, *op. cit.*, p. 379, for a curious statement of Paine's belief in the equality of suffrage. Dorfman ignored most of the arguments stated by Paine in an effort to prove that the sole purpose for removing property qualifications for voting was the protection of property rights. Dorfman's argument is based entirely upon carefully selected sections of *The Rights of Man* and "Letter Addressed to the Addressers," ignoring completely the two pamphlets which were most explicit on the question of suffrage. (*Agrarian Justice* and "Dissertation on First Principles of Government.")

[81] "Letter Addressed to the Addressers, etc.," Vol. III, p. 88. See also "Constitutional Reform," Vol. IV, App. G., p. 462.

[82] *Ibid.*, pp. 75, 88. [83] *Agrarian Justice*, Vol. III, p. 326.

[84] "On the Constitution of 1795," Vol. III, pp. 283–284.

[85] "Address to the Addressers," Vol. III, p. 88

[86] *The Rights of Man*, Vol. II, p. 468.

[87] *Ibid.*, p. 399.

[88] "Dissertation on First Principles of Government," Vol. III, p. 269.

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"criminally . . . [as] a criterion for exclusive rights."[89] Men of property should remember that "it is possible to exclude men from the right of voting, but it is impossible to exclude them from the right of rebelling against that exclusion; and when all other rights are taken away, the right of rebellion is made perfect."[90]

IV. POPULAR CONSULTATION

To remove the necessity of resorting to violence to secure their ends, the people must be given some means of expressing their desires both in the changing of the fundamental law and in the selection of representatives. Paine believed that elections, frequently held,[91] prevent "inconveniences accumulating, till they discourage reformation or promote revolution."[92]

Constitutions, as we have seen, cannot be modified even by elected representatives, because the government would then be removed from the people after the first election.[93] Constitutions should state the methods by which the people may make "alterations, amendments, or additions."[94] A provision for constitutional amendment is one of the greatest steps toward the "security and progress of Constitutional liberty."[95] The wisest provision for amendment is probably one which calls for a periodic convention—perhaps every seven years[96]—because "it provides frequent opportunity of using it [the right of constitutional revision] and thus helps to keep the government within the principles of the constitution."[97] By electing special assemblies for the consideration of proposed revisions, "the general WILL, whether to reform or not, or what the reform shall be, or how far it shall extend, will be known, and it cannot be known by any other means."[98] When the conven-

[89] *Ibid.*, p. 268. See *The Rights of Man*, Vol. II, p. 296, where Paine suggests that the mob is the safest asylum possible, and that even a miser would cease to think only of money if he were to mix with a mob. He uses "the mob" both to threaten those of property and to idealize "the common man."

[90] *Ibid.*, pp. 267–268.

[91] "Constitutional Reform," Vol. IV, App. G., p. 460. Paine agreed with Franklin that "where annual elections end, tyranny begins."

[92] *The Rights of Man*, Vol. II, pp. 452, 517. See also "Constitutional Reform," Vol. IV, App. G., p. 457, and "Letter to the Citizens of the United States" (No. 3), Vol. III, p. 392.

[93] *Ibid.*, p. 438. Also see p. 311.

[94] *Ibid.*, p. 311.

[95] *Ibid.*, p. 452.

[96] *Ibid.*, p. 431.

[97] "Thomas Paine's Answer to Four Questions on Legislative and Executive Powers," Vol. II, p. 250.

[98] "Letter Addressed to the Addressers, etc.," Vol. III, p. 87. See also p. 81, and "Constitutional Reform," Vol. IV, App. G., p. 457.

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tion has finished its work, the revisions should be submitted to the people for their approval.[99] Paine was clear that the calling of conventions at regular intervals must not be interpreted as barring revisions during the interim, because the powers of "forming and reforming, generating and regenerating constitutions . . . are always before a country *as a matter of right* . . . ."[100]

The people cannot meet together to pass on ordinary laws, so representatives must be kept in close touch with their constituents.[101] Legislators who are not held accountable to the people cease to represent the nation and represent only themselves.[102] They are no better than the aristocracy, who, being "accountable to nobody, ought not be trusted by anybody."[103] Free discussion,[104] aided by complete reports to the people by government officials, is essential to the maintenance of representative government. The reason for every government act must be given, because each citizen is a "proprietor of government, and considers it a necessary part of his business to understand."[105]

Paine gives more attention to the election of the members of the legislature than to the election of the members of the executive branch of government, because he assumed that the legislature in a democracy would be supreme. Nevertheless, he believed that both arms of the executive branch—the judiciary was not a separate branch of government[106]—should be kept responsible to the people through elections. Applying his beliefs to the American scene, he insisted that presidential electors should be selected by the people

[99] "Constitutional Reform," Vol. IV, App. G., p. 457.

[100] *The Rights of Man*, Vol. II, pp. 397–398. See also "Letter Addressed to the Addressers, etc.," Vol. III, p. 86.

[101] *Common Sense*, Vol. I, p. 71.

[102] "Constitutional Reform," Vol. IV, App. G, p. 460.

[103] *The Rights of Man*, Vol. II, p. 323. See also "Anti-Monarchical Essay for Use of New Republicans," Vol. III, p. 108, for a curious passage illustrating the lengths to which Paine would go to assure legislative responsibility. "With representatives, frequently renewed, who neither administer nor judge, whose functions are determined by laws; with national conventions, with primary assemblies, which can be convoked at any moment; with a people knowing how to read, and how to defend itself; with good journals, guns, and pikes; a Legislature would have a good deal of trouble in enjoying many months of tyranny."

[104] "Letter to Citizens of the United States" (no. 4), Vol. III, pp. 414–417. This essay was written against the Sedition Act of 1798.

[105] *The Rights of Man*, Vol. II, pp. 427–428.

[106] "Dissertation on First Principles of Government," Vol. III, p. 275. See also "Thomas Paine's Answer to Four Questions, etc., Vol. II, pp. 238–239.

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rather than by the legislature, as was true in some states.[107] Judges should also be made immediately responsible to the people. Terms for "good behavior" are open to objection because they have no legal or moral meaning.[108] In monarchies, judges should be independent of the king, but in democracies an irresponsible court cannot be tolerated. In a monarchy, the judges may protect the people against the tyranny of the king. In a democracy, an independent judiciary is a limitation upon the rights of the people to self-government. If presidents, governors, and legislators can be replaced by elections, why is it that judges can be removed only by "the tedious and expensive formality of impeachment?"[109] Perhaps, Paine suggested, because judges are lawyers, and lawyers always draw up the sections of constitutions dealing with the judiciary.[110]

V. DEMOCRACY AND DEISM

If the above analysis is correct, Paine's political ideas, at least in his later writings, satisfy all the requirements of the majority-rule democrat. There remains to discuss briefly the relationship of his belief in democracy and his belief in ultimate, immutable principles and absolute moral laws which may be objectively discovered—a notion which pervades all his writings.[111]

His "scientific" deism held that God revealed himself in nature, and that by observing nature man could find the laws which govern society, just as Newton found the laws which govern the world of physics.[112] A democratic or representative government is best fitted to follow the laws of nature because it "takes society and civilization for its basis; nature, reason, and experience for its guide."[113] Being in accord with laws of nature, the democratic society can discover other laws which govern the conduct of society.

[107] "Constitutional Reform," Vol. IV, App. G., p. 461.

[108] *Ibid.*, p. 464. [109] *Ibid.* [110] *Ibid.*

[111] See, for example, "Dissertation on Government, etc.," Vol. II, p. 132. "There are such things as right and wrong in the world." And "Dissertation on First Principles of Government," Vol. III, p. 260. " . . . time has no more connection with, or influence upon principle, than principle has upon time."

[112] See, for example, *The Age of Reason*, Vol. IV, p. 45, *"The word of God is the creation we behold:* And it is in *this word* that God speaketh universally to man." (Italics are Paine's.) See also p. 191: "The principles we discover are eternal and of divine origin. . . . " For a brief analysis of the relationship of Paine's religious beliefs to his political, economic, and social thinking, see the excellent article by H. H. Clark, "Toward a Re-interpretation of Thomas Paine," *American Literature*, Vol. V, pp. 133–145. [113] *The Rights of Man*, Vol. II, pp. 418, 423.

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Men are by nature both rational and good.[114] They know that to do good is to act in their own interest.[115] All that is necessary to put natural laws into practice is to have wise men inform the people of their findings about the nature of society, and the people will insist that right principles be followed.[116] "Reason, like time, will make its own way,"[117] and the errors committed at one time will be corrected by the people as soon as they recognize their mistakes.[118] The people may be trusted with power, because it is to their interest, i.e., to the interest of the majority, that right be done.[119] Superior members, who guide and inform the mass of men, spring from every section of society, but only a democratic state can take advantage of their wisdom, because only a democratic state allows all sections of the nation to take part in government.[120] Inferior members of the community may occasionally inform superior members, and therefore it would be unwise to bar them from participation.[121] When all members of society take part in its governance, all views are expressed, thus adding to the general enlightenment necessary for the passage of good acts.[122] It appears, then, that it is right that decisions should be made by the people, as expressed by the majority, because in the long run the majority will decide rightly.[123]

When the few are allowed to rule—and Paine assumed that minority-rule would be hereditary—the likelihood of government according to natural law is diminished. The interest of the few is not necessarily the interest of the entire society, and hence is not in

[114] *Ibid.*, pp. 403, 508. See also "The Reasons for Preserving the Life of Louis Capet," Vol. III, p. 122; "Thomas Paine's Answer to Four Questions, etc.," Vol. II, p. 248.

[115] *Ibid.*, p. 435. "Thomas Paine's Answer to Four Questions, etc.," Vol. II, p. 246; "Letter to the Citizens of the United States" (no. 4), Vol. III, p. 405; "Constitutions, Governments, and Charters," Vol. IV, App. H., pp. 468.

[116] "Letter Addressed to the Addressers, etc.," Vol. III, pp. 45–46. "Address and Declaration of the Thatched House Tavern," Vol. II, p. 256; *The Rights of Man*, Vol. II, p. 296.

[117] *The Rights of Man*, Vol. II, p. 403.

[118] *Ibid.*, p. 509. [119] *Ibid.*, p. 435. [120] *Ibid.*, pp. 418–420.

[121] "Thomas Paine's Answer to Four Questions, etc.," Vol. II, p. 242.

[122] *The Rights of Man*, Vol. II, p. 386. See also "Anti-Monarchical Essay for the Use of New Republicans," Vol. III, p. 103.

[123] *Ibid.*, p. 384. "Constitutions, Governments, and Charters," Vol. IV, App. H., p. 457; see also "Letter to Citizens of the United States" (no. 4), Vol. III, p. 400, "The Right will always become the popular." Compare this position with Max Lerner, *op. cit.*, p. 107, " . . . the majority in a state represents a good bet in the long pull of history." See Kendall, *op. cit.*, Ch. X, where the question is raised as to whether the belief in the "rightness" of majorities underlies all modern theories of majority rule.

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accord with God's principles.[124] Succeeding generations of minorities become less and less qualified to rule because wisdom is not hereditary; in-breeding among the minority weakens the off-spring; and because the children are reared in an atmosphere conducive to oppression, not justice.[125]

The principles of a democratic society, stated above, have been discovered through the "science of government," although that science is still in its infancy.[126] Students of government have also found that forms of government must correspond to its principles to produce harmony and "a rational order of things."[127] Future generations will discover new laws and modify or change present forms of government to harmonize with God's revealed principles. Because of the magnificent advances during the last quarter of the eighteenth century toward an understanding of the natural laws and principles which govern society, "the present age will hereafter merit to be called the Age of Reason. . . ."[128]

[124] *Ibid.*, p. 321.
[125] *Ibid.*, pp. 322–323.
[126] "Thomas Paine's Answer to Four Questions, etc.," Vol. II, p. 245; "Memorial Addressed to James Monroe," Vol. III, p. 176.
[127] *The Rights of Man*, Vol. II, p. 332.
[128] *Ibid.*, p. 512.

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CONSTITUTIONAL LAW IN 1941–1942

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1941

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The vacancies on the Supreme Court caused by the retirement of Mr. Justice McReynolds and Chief Justice Hughes were filled by President Roosevelt during the summer of 1941. When the Court convened in October, Mr. Justice Stone, originally appointed by President Coolidge, became Chief Justice. Chief Justice White was the only other associate justice to be promoted to the Chief Justiceship. Senator James F. Byrnes of South Carolina, and Attorney General Robert H. Jackson of New York took their seats as associate justices. Thus seven justices have been placed on the Court by President Roosevelt. Any idea, however, that these Roosevelt appointees conform to any uniform pattern of thought is belied by the fact that in the 75 cases in the 1941 term turning on important questions of either constitutional law or federal statutory construction, there were dissents in 36, and 23 of these dissents were by either three or four justices. No act of Congress has been declared unconstitutional since May, 1936, when the Municipal Bankruptcy Act was held invalid. Since 1937, the Court has overruled 20 previous decisions, mentioning them by name, while it has modified or qualified a number of others.

A. QUESTIONS OF NATIONAL POWER

I. LEGISLATIVE POWER

1. COMMERCE POWER

The decisions arising under the commerce clause broke no new ground, but in some instances pushed established principles to new extremes. In United States v. Wrightwood Dairy Co.,[1] the Secretary of Agriculture, acting under the provisions of the Agricultural Marketing Agreement Act of 1937, had established a milk marketing agreement in the Chicago area, under which milk is classified and minimum prices to be paid producers for each class of milk are established. All of the Wrightwood milk was produced locally and none of it was sold in interstate commerce. Speaking through Chief Justice Stone, the Court held that since Congress plainly has the power to regulate the price of milk distributed through interstate commerce, it has also the incidental power to regulate the price of locally-produced and locally-sold milk which competes with interstate commerce. "The commerce power is not confined in its exercise to the regulation of

[1] 315 U.S. 110, 1942.

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commerce among the states. It extends to those intrastate activities which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end." It is clear that the marketing of a local product "in competition with that of a like commodity moving interstate may so interfere with interstate commerce or its regulation as to afford a basis for Congressional regulation of the intrastate activity." The legislative history of the Marketing Act shows that Congress intended to confer the authority here exercised.

While the Fair Labor Standards Act was held valid in United States v. Darby,[2] the question may still be raised whether particular groups of employees are closely enough connected with interstate commerce to be validly covered by the act. In Kirschbaum v. Walling,[3] the Court held that the wage and hour provisions of the act cover the operating and maintenance employees of the owner of a building who rents space to persons who produce goods principally for the interstate market. These employees comprised firemen, electricians, elevator operators, watchmen, porters, and the like. The act applies to employees who are "engaged in commerce or in the production of goods for commerce," and declares that "for the purposes of this act an employee shall be deemed to have been engaged in the production of goods if such employee was employed . . . in any process or occupation necessary to the production thereof, in any state." Speaking for the Court, Mr. Justice Frankfurter aptly observed: "To search for a dependable touchstone to determine whether employees are 'engaged in commerce or in the production of goods for commerce' is as rewarding as an attempt to square the circle." The Court held, however, that the employees in this case had a "close and immediate tie" with the process of producing goods for commerce, and therefore were an essential part of it.

A rate order issued by the Federal Power Commission under the authority of the Natural Gas Act of 1938 was held valid in Federal Power Commission v. Natural Gas Pipeline Co.,[4] the first important case to arise under this statute. The company brings gas by its own pipelines from Texas to Illinois, where it is sold and distributed. The statute authorizes the Commission to fix "just and reasonable rates" for the transportation and sale of gas in interstate commerce, and to order rates decreased which are "unjust . . . or are not the lowest reasonable rates." The Commission valued the company's property and business, using mainly the company's estimates of costs and physical value, and thereby reached a rate base. After providing for amortization, and a rate of return of $6\frac{1}{2}$ per cent, it found that there would be available some $3,750,000 of income which

[2] 312 U.S. 100, 1942. See this REVIEW, Vol. 36, p. 263.
[3] 316 U.S. 517, 1942. [4] 315 U.S. 575, 1942.

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could be applied to the reduction of rates. The Commission accordingly ordered the company to file a new schedule of rates and charges which would reduce its operating revenue by $3,750,000. In upholding the Commission's order, the Court, speaking through Chief Justice Stone, dealt broadly with the statute and the Commission's power under it. The power to regulate the prices of commodities in interstate commerce is at least as great under the Fifth Amendment as is that of the states under the Fourteenth Amendment to regulate the prices of intrastate commodities. Congress clearly had power to regulate the price of gas distributed through pipe lines in interstate commerce. The Commission could validly order the company to decrease its revenues by working out a new rate schedule instead of issuing a Commission-made schedule of rates. The chief attack on the order was based on the Commission's refusal to add to the rate base $8,500,000 for going concern value an item covering expenses incurred in building up the business during the period prior to rate regulation. The Court concluded that this claim was without merit. It found the methods by which amortization was computed proper. It held that 6½ per cent is a fair annual return on the rate base as computed. In a concurring opinion, Mr. Justice Black, joined by Justices Douglas and Murphy, took the Court to task for reviewing in detail the methods by which the Commission reached its final rate order. The Natural Gas Act provides that "the finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." Therefore, "it is not the function of the courts to prescribe what formula should be used. . . . The decision in each case must turn on considerations of justness and fairness which cannot be cast into a legalistic formula. The rate of return to be allowed in any case calls for a highly expert judgment. That judgment has been entrusted to the Commission. There it should rest."

II. JUDICIAL POWER

Indianapolis v. Chase National Bank[5] reaffirms and applies the familiar rule that to establish in the federal courts jurisdiction based on diversity of citizenship there must be "actual, substantial, controversy between citizens of different states, all of whom on one side of the controversy are citizens of different states from all parties on the other side." The bank is a trustee under a mortgage deed to secure a bond issue executed by the Indianapolis Gas Company in 1902. In 1913, Indianapolis Gas leased all of its gas plant property to a competitor, the Citizens Gas Company, under a ninety-nine year lease guaranteeing a favorable rate of return on bonded indebtedness and common stock. After twenty-two years, Citizens Gas conveyed its entire property to the City of Indianapolis. The City refused to be bound by the lease. The bank in this case brought action

[5] 314 U.S. 63, 1941.

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against Indianapolis Gas, Citizens Gas, and the City of Indianapolis, seeking a declaratory judgment that the lease is binding on the City, and also seeking judgment for overdue interest on the mortgage bonds. In a five-to-four decision, the Court, speaking through Mr. Justice Frankfurter, held that the federal district court had no jurisdiction. "What Chase wants Indianapolis Gas wants and the City does not want. Yet the City and Indianapolis Gas were made to have a common interest against Chase, when, as a matter of fact, the interests of the City and of Indianapolis Gas are opposed to one another." Since the bank and Indianapolis Gas are in reality on the same side of the case, thereby placing citizens of Indiana on both sides, there is failure of diversity of citizenship.

In a five-to-three decision in Toucey v. New York Life Insurance Co.,[6] the Court held that a federal court may not enjoin a proceeding in a state court simply because the claim in controversy has previously been adjudicated in a federal court. Toucey, a citizen of Missouri, sued the insurance company, a New York corporation, in the federal district court in Missouri for rights claimed by him under a life insurance policy. He lost his suit and took no appeal. Later he assigned his claim under the policy to a citizen of the District of Columbia, who proceeded to sue the company on the same grounds in the Missouri state court. The company asked the federal district court to enjoin the relitigation of the case in the state court. Mr. Justice Frankfurter spoke for the majority. Section 265 of the Judicial Code provides: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state. . . ." This provision is derived from a federal statute of 1793 and embodies the "important congressional policy—to prevent needless friction between state and federal courts." It was urged by the company that a series of cases dating from 1878, and culminating in Supreme Tribe of Ben Hur v. Cauble,[7] had established an exception to Section 265 in the form of a rule permitting federal injunctions to restrain relitigation in state courts of cases previously adjudicated in the federal courts. Observing that "loose language and a sporadic, ill-considered decision cannot be held to have embedded in our law a doctrine which so patently violates the expressed prohibition of Congress," the Court held that the injunction asked for cannot be granted. The case may be regarded as overruling Supreme Tribe of Ben Hur v. Cauble and confirms the right of relitigation. Congress, however, could change this situation if it so desired.

In *Ex parte* Colonna,[8] the Court held that the provisions of the Trading with the Enemy Act suspend the right of enemy governments to prosecute actions in our courts. Accordingly, the Royal Italian Ambassador was not permitted to present an action in a federal district court to stop pend-

[6] 314 U.S. 118, 1941.
[7] 255 U.S. 356, 1921.
[8] 314 U.S. 510, 1942.

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ing litigation with respect to property alleged to belong to the Italian government.

III. FEDERAL CIVIL RIGHTS

Federal Wire-tapping Cases. Two decisions dealt with the use of testimony secured by federal officers by wire-tapping or its equivalent. In both the evidence was held admissible. In Goldstein v. United States,[9] Goldstein's conviction had rested mainly upon the testimony of his co-conspirators in a scheme to defraud insurance companies by presenting false claims for disability benefits. These co-conspirators turned state's evidence when confronted with transcripts of their telephone conversations secured by the government by wire-tapping. None of Goldstein's telephone conversations had been so intercepted. The Court held that Goldstein's rights under the Fourth Amendment had not been violated. It is well established that one may not validly object to the introduction of evidence secured by an unconstitutional search and seizure of which he is not a victim. The Federal Communications Act forbids wire-tapping, and the wire-tapping in this case was clearly unlawful, but the Court held that the act protects only the sender of the intercepted messages. This construction is supported by the provision of the statute permitting the sender of messages to consent to their divulgence. Therefore Goldstein was the victim neither of an unreasonable search and seizure nor of a violation of the statute, and the evidence was admissible. Mr. Justice Murphy, joined by the Chief Justice and Mr. Justice Frankfurter, dissented, urging that the statute should be interpreted as a "Congressional command that society shall not be plagued with such practices as wire-tapping."

In Goldman v. United States,[10] the defendant conspired with others to violate the Bankruptcy Act. He approached a lawyer representing creditors' interests with a proposal for fraudulent collusion in the sale of the bankrupt's assets. This lawyer notified federal officers and with their knowledge arranged to negotiate further with Goldman. Prior to this meeting, federal officers installed a dictaphone in the office of the conspirators with the intention of transcribing their telephone conversations. The dictaphone did not work and the officers thereupon used a detectaphone, an instrument which, when placed upon a partition wall, picks up sound waves and amplifies them. The officers overheard in this way, and stenographers transcribed, conversations carried on by the conspirators over the telephone, and this testimony was used to convict Goldman. He argued that this evidence was inadmissible since it was secured by a violation of the Fourth Amendment and the Federal Communications Act. The Court found no violation of the statutory prohibition against inter-

[9] 316 U.S. 114, 1942. [10] 316 U.S. 129, 1942.

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cepting communications by wire. There was no "interception" any more than there would have been had the officers heard the conversations through a crack in the door. The statute protects the means of communication and not the secrecy of the conversation. The Court held that there had been no illegal trespass, and that therefore the installation of the detectaphone did not amount to an unreasonable search and seizure. The use of the detectaphone was no more objectionable constitutionally than the tapping of telephone wires, which the Court, in the Olmstead case,[11] held not to constitute an unreasonable search and seizure. The Court refused to overrule the Olmstead case, although it was urged to do so. Chief Justice Stone and Justices Frankfurter and Murphy dissented. All three stated that they favored overruling the Olmstead case. Mr. Justice Murphy went on to say that that case, however, did cover the present one. "Whatever may be said of a wire-tapping device that permits an outside telephone conversation to be overheard, it can hardly be doubted that the application of a detectaphone to the walls of a home or a private office constitutes a direct invasion of the privacy of the occupant, and a search of his quarters."

Peonage. In Taylor v. Georgia,[12] a unanimous Court held that a Georgia statute violated the Thirteenth Amendment and the federal statutes forbidding peonage. The act provided that any person who makes a contract to work for another with the intent to secure money without performing the work contracted for, or any one who makes such a contract for labor and thereafter accepts money from the hirer with the intent not to perform the service agreed upon, shall be deemed a common cheat and swindler, and punished accordingly. Proof of the contract, the taking of the money, and the failure to perform the labor or to return the money without good and sufficient cause, constituted presumptive evidence of the criminal intent necessary to spell out the crime. Speaking through Mr. Justice Byrnes, the Court stated that the necessary result of the statute is "that one who has received an advance on a contract for services which he is unable to repay is bound by the threat of penal sanction to remain at his employment until the debt has been discharged. Such coerced labor is peonage." In 1911, the Court held invalid a similar Alabama statute in the first important constitutional opinion written by Mr. Justice Hughes. The statute in this case, Bailey v. Alabama,[13] differed from the Georgia statute in two respects. First, it punished as fraud the breaking of the contract for labor, rather than punishing the presumed initial fraud involved in making the contract. Second, under Alabama law, the defendant was not allowed to rebut the presumption of fraud by making any kind of

[11] Olmstead v. United States, 277 U.S. 438, 1928. See this REVIEW, Vol. 23, p. 82.

[12] 315 U.S. 25, 1942. [13] 219 U.S. 233, 1911.

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statement as to his uncommunicated motives and intentions. The Court held that these differences between the two statutes were unimportant and that the Georgia statute was invalid under the rule of the Bailey case.

Criminal Due Process. In Glasser v. United States,[14] the question was raised whether Glasser, a former assistant United States attorney convicted of defrauding the government in the exercise of his official duties, had been denied the constitutional right of counsel guaranteed by the Sixth Amendment. Glasser was tried with other defendants in a federal court, and was represented by an attorney of his choice. At the outset of the trial, the presiding judge, over Glasser's protest, appointed Glasser's attorney to represent also a co-defendant. The legal interests of Glasser and this co-defendant were divergent, and the attorney was obviously embarrassed by this conflict of loyalties. The Supreme Court, speaking through Mr. Justice Murphy, held that Glasser's constitutional right to counsel had been impaired. Not only was he the victim of the conflict of interests just mentioned, but even without that he was entitled, if he so desired, to the undivided time and attention of his own lawyer. Glasser and his co-defendants also alleged that they had been denied an impartial jury trial as guaranteed by the Constitution, because all the names of women from which the jury panel was drawn were taken from a list furnished to the clerk of the Court by the Illinois League of Women Voters, and made up exclusively from those of its members who had attended special "jury classes." Women had been admitted to jury service in Illinois only a few weeks before Glasser and the others were indicted, and some of them, at least, were taking their new responsibilities seriously. Glasser submitted in proof of this allegation only an article which had appeared in the *American Bar Association Journal* for April, 1940. The Court held that this was insufficient proof, but stated bluntly that had it been proved that the women jurors had been chosen as Glasser said they had, the defendants would clearly have been entitled to a new trial. Officials charged with choosing federal jurors "may exercise some discretion to the end that competent jurors may be called. But they must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross section of the community. Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted." Mr. Justice Frankfurter, joined by Chief Justice Stone, dissented on the ground that Glasser's long experience as a criminal lawyer made entirely frivolous his claim that his interests had been jeopardized by having to share his lawyer with a co-defendant.

[14] 315 U.S. 60, 1942.

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Jury Trial in Civil Cases. The fundamental nature of the right of jury trial in a civil case is emphasized in Jacob v. City of New York,[15] a case brought by Jacob to recover damages for personal injuries arising out of his employment on a municipally-owned ferry boat. Jacob was injured by a fall which resulted when the open-end wrench with which he was tightening bolts on a manifold head slipped. The wrench fitted loosely because of long wear, and he had previously asked for a new one and had been told by the engineer that one had been ordered. His right to recover damages depended upon the application of the admiralty doctrine of comparative negligence. The trial judge, however, refused to let the case go to the jury and dismissed Jacob's complaint on the basis of the "simple tool doctrine." This doctrine is that "the master is not negligent in the case of defective simple tools because the possibility of injury from such tools is so slight as to impose no duty on him to see that they are free from defects in the first instance or to inspect them thereafter." A divided Court, speaking through Mr. Justice Murphy, held that the testimony of Jacob made a sufficient showing to allow the jury to consider the issue of the city's negligence. "Without doubt the case is close and a jury might find either way. But that is no reason for a court to usurp the function of the jury. We are satisfied that a due respect for the statutory guaranty of the right of jury trial, with its resulting benefits, requires the submission of this case to the jury."

IV. STATUTORY CONSTRUCTION

A large number of cases turned upon the construction of federal statutes rather than of clauses of the Constitution. Some of these are of major intrinsic importance in spite of the fact that in most cases Congress could, by changing the statute, set aside the rule established by the Court.

1. LABOR CASES

1. *The Fair Labor Standards Act.* Besides the case of Kirschbaum v. Walling, *supra*,[16] dealing with the constitutional scope of the Fair Labor Standards Act, there were four cases which further construed the act. Two of these dealt with overtime pay. In Overnight Motor Transportation Co. v. Missel,[17] the company's rate clerk, entitled to a statutory minimum salary of $27.50 per week, worked irregular hours which ranged from 65 to 80. Missel was entitled under the Act to time and a half for overtime, but in order to compute the overtime pay it was necessary to determine a basic hourly wage rate. The company sought to compute overtime pay on the basis of the hourly rate derived from dividing the weekly minimum of $27.50 by the statutory hour standard of 44. The Court, however, directed the company to pay overtime upon the basis of

[15] 315 U.S. 752, 1942. [16] Page 264. [17] 316 U.S. 572, 1942.

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the regular or customary hourly wage rate, which was considerably higher than the minimum. In Walling v. A. H. Belo Corporation,[18] the company, a newspaper publisher, established basic rates of pay at 67 cents per hour for the first 44 hours each week with overtime at 150 per cent of 67 cents. To protect the men whose irregular schedules might fall in any week to a small number of hours, it added a guarantee of at least $40 a week. The federal administrator urged that this $40 must serve as the basis for the computing of the hourly wage rate on which overtime is figured. Under the company's formula, a man working fifty hours a week would receive pay for forty hours at 67 cents and for ten hours overtime at $1 an hour—total $36.80. By the administrator's rule, the hourly rate in the same situation would be $40 divided by fifty, which would be 80 cents an hour. He would receive this for the first forty hours and $1.20 per hour for ten hours overtime—total $44. The Court held that the Company could validly agree with its men for the 67-cent "regular" rate, and that the $40 guarantee was not intended to replace it.

In Cudahy Packing Co. v. Holland,[19] the Court held by a five-to-four decision that the Fair Labor Standards Act does not authorize the Administrator of the Wage and Hour Division to delegate to subordinates his power to subpoena witnesses. The dissenting justices objected to what they regarded as an over-technical interpretation of the statute which would seriously hamper its enforcement.

Williams v. Jacksonville Terminal Co.[20] held that the tips received by a redcap at a railroad terminal are part of his wages within the meaning of the Fair Labor Standards Act. An employer, after due notice to his employees, is entitled to keep all earnings such as tips arising from the business. In the present case, these tips were turned in by the redcaps at the close of each day and credited toward the statutory minimum wage received by the redcap from the company. The arrangement was held valid.

2. *National Labor Relations Act.* Three cases worth noting arose under the Wagner Act. In Southern Steamship Company v. N. L. R. B.,[21] a strike by seamen on board a vessel tied to a dock away from its home port was held to constitute a mutiny within the provisions of the Criminal Code and to justify the seamen's discharge by the owner for misconduct. The strike occurred while a Philadelphia vessel was docked at Houston, Texas. Thirteen members of the crew struck to compel recognition of their union, and continued to strike, without violence, after being formally notified by a federal officer that they were violating the Criminal Code by refusing to obey the lawful commands of the master of the ship. They later returned to work. When the ship returned to Philadelphia, five of

[18] 316 U.S. 624, 1942.
[19] 315 U.S. 357, 1942.
[20] 315 U.S. 386, 1942.
[21] 316 U.S. 31, 1942.

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the men were discharged. The N. L. R. B. held that their discharge was an unfair labor practice by the company, since it resulted from their activities in behalf of the union, and ordered their reinstatement with back pay. The Court reviewed the reasons for requiring seamen to obey orders while on shipboard, and held that the strike was unlawful from its inception. Admitting that the unfair labor practices of the company had caused the strike, it held that the Board's order of reinstatement went beyond its authority under the statute to make such requirements "as will effectuate the policies of the act." Four justices dissented.

A free speech issue was injected into the case of N. L. R. B. v. Virginia Electric & Power Co.[22] The Board found that bulletins posted by the employer, together with speeches by company officers at meetings of workmen urging the advantages of an "inside" union, amounted to coercion of employees within the prohibitions of the statute. The company urged that the finding violated the First Amendment. The Court did not meet this challenge squarely. It held that the bulletins and speeches might form part of a general pattern of conduct on the part of the employer amounting to coercion. "In determining whether the company actually interfered with, restrained, and coerced its employees the Board has a right to look at what the company has said as well as what it has done." The bulletins and speeches by themselves, however, did not justify a finding of coercion. Since it was not clear that the Board based its conclusions of coercion on the whole course of the company's conduct, rather than on the bulletins and speeches alone, the Court remanded the case for reconsideration by the Board in the light of this opinion.

Prior to a lawful closed shop agreement, an employer is guilty of an unfair labor practice if he coöperates with a union, representing an uncoerced majority of his employees, in an effort to secure new members and to prevent the intrusion of a competing union. This was held in N. L. R. B. v. Electric Vacuum Cleaner Co.[23] Beginning in 1935, a majority of the company's employees were affiliated with the A. F. of L. They were entitled to represent the workers, and they made contracts with the company covering hours and working conditions. The contracts, however, did not include a closed shop agreement. In 1937, a union affiliated with the C. I. O. undertook to organize the plant. Within a short time, this C. I. O union claimed that a majority of the workers in the plant had become its members. To combat this drive, the company shut down the plant at the request of the A. F. of L. union and notified its employees that when it was reopened the company would employ only members of the unions having contracts with the company—the original A. F. of L. group. The N. L. R. B. ruled that this amounted to coercion by the company which interfered with the freedom of the employees to organize as they wished. The shutdown aided this unfair labor policy, and the company's interfer-

[22] 314 U.S. 480, 1941. [23] 315 U.S. 685, 1942.

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ence constituted an effort "to restore the type of company-union coördination in labor matters which the act [N. L. R. A.] forbids." The Court upheld the ruling of the Board.

3. *Federal Anti-Racketeering Act.* The Court held in United States v. Local Number 807, I.B.T.[24] that the Federal Anti-Racketeering Act of 1934 does not apply to the activities, many of them admittedly unlawful on other grounds, of a labor union seeking to further its own interests. The defendant union includes most of the motor truck drivers and helpers in the City of New York. Large shipments of goods come into New York from other states in trucks manned by out-of-state drivers and helpers who do not belong to Local 807. These trucks and their drivers were met by members of Local 807, who demanded that members of the local union be permitted to drive the trucks into the city and, when reloaded for the return journey, drive them out again. In lieu of this, Local 807 demanded from the owners of the trucks $9.42 for each large truck and $8.41 for each small truck. These amounts were the regular union rates for a day's work of driving and unloading. If these demands were refused, violence and coercion were threatened and not infrequently resorted to. Many of the out-of-state trucking companies complied with these demands in order to avoid trouble. The Federal Anti-Racketeering Act makes it a crime to obtain the payment of money "by the use of or attempt to use or threat to use force, violence, or coercion," but the act does not apply to attempts to secure "the payment of wages by a bone fide employer to a bona fide employee." In an opinion by Mr. Justice Byrnes, the Court declared that the legislative history of the act indicates that it was intended to reach the economic extortion carried on by professional gangsters of the Kelly and Dillinger types. Congress did not intend it to apply to "traditional labor union activities. . . . Congress plainly attempted to distinguish militant labor activity from other, and to afford it ample protection." The exception from the penalties of the Act of those seeking the payment of wages "by a bona fide employee" is not limited to those who have attained the status of an employee before they attempt to obtain the money. Since Local 807 attempted to secure money which was the equivalent of wages for the local trucking service which they insisted upon rendering, the Act did not apply to them. Chief Justice Stone dissented on the ground that the payments in question were made, not for services, but to purchase immunity from violence. The members of the union were not bona fide employees, and the money which they extorted was not wages.[25]

[24] 315 U.S. 521, 1942.

[25] In Columbia River Packers Association v. Hinton, 315 U.S. 143, 1942, the Norris-La Guardia Act, which forbids the issuance of injunctions in cases involving labor disputes, is inapplicable to a controversy between a fish-canning establishment and fishermen, when it appears that the fishermen in question are independent entrepreneurs rather than employees.

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4. *Federal Anti-Trust Laws.* In Georgia v. Evans,[26] the Court held that a state is a "person" within the meaning of the section of the Sherman Act which provides that "any person who shall be injured in his business or property" by others who have violated the Act may recover triple damages. In United States v. Cooper Corporation,[27] the Court held that the United States government could not sue under this clause, since the act afforded the United States three other remedies, criminal prosecution, injunction, and seizure of property. The states, however, without the triple damage clause, have no redress for injuries resulting from violations of the act, a result Congress could hardly have intended. Georgia was accordingly allowed to sue the defendants for unlawfully combining to fix prices and suppress competition in the sale of asphalt which the state used in large quantities in building and maintaining its roads.

In two cases, the Court construed rigidly the right of the holder of a patent to control the re-sale price of the patented article. In United States v. Univic Lens Co.[28] and United States v. Masonite Corporation,[29] the Court held that the complicated price-fixing agreements and combinations involved in each case went beyond the legitimate scope of the patent monopoly and violated the Sherman Act.

5. *War Profits—The Bethlehem Steel Corporation Case.* The Court, with one dissent, permitted the Bethlehem Steel Corporation to recover from the government some $5,000,000 on contracts for ships built during the first World War.[30] With previous payments, this gave the company a profit of $24,000,000, or a little more than 22 per cent of the cost of the ships. The upshot of this decision was that the government had made a bad bargain, and could not now crawl out of it. The contracts involved provided for a preliminary estimate of the cost of building the ships, an estimate now shown to have been exorbitantly high, and an agreement between the company and the government to divide equally the savings resulting from the actual building of the ships at a lower cost. The government alleged that these contracts were made under duress arising out of the war emergency. The government needed ships and needed them in a hurry, and Bethlehem was the biggest ship-building establishment in the world. In this situation, the corporation had the whip hand and dictated its own terms. The Court, in an opinion by Mr. Justice Black, rejected the claim of duress. It was also argued that the contracts were unenforceable because they provided for unconscionable profits. Admitting that a profit of 22 per cent was unduly high, the Court held that it was not, however, flagrantly out of line with profits generally earned during the last war. The Court's résumé of profiteering, which brought in in some cases

[26] 316 U.S. 159, 1942. [27] 312 U.S. 600, 1941.
[28] 316 U.S. 241, 1942. [29] 316 U.S. 265, 1942.
[30] United States v. Bethlehem Steel Corporation, 315 U.S. 289, 1942.

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profits of 200 and 300 per cent, does not make pleasant reading but tends to support the Court's conclusion that the Bethlehem company was not worse than many others and better than some. Mr. Justice Frankfurter dissented.

6. *Tax Domicile of Government Employees in the District of Columbia.* In District of Columbia v. Murphy,[31] the Court swept within the reach of the District's income tax law most persons living in the District and employed by the federal government. It has long been established that the mere fact that one lives in the District for an indefinite period while in the service of the government does not in itself establish a domicile for tax purposes. But persons are clearly domiciled in the District who live there and have no fixed and definite intent to return and make their homes where they formerly lived. The burden rests upon such persons to prove that they have a domicile elsewhere upon which they can rely to escape taxation. Speaking through Mr. Justice Jackson, the Court explains at length the considerations which support or defeat the claim of domicile. These include a person's manner of living in Washington, the presence there of his family, his relation to churches or clubs, his investments, and the nature of the ties he retains with his former home. These are all evidence of the intention with respect to domicile which the law makes controlling. In the case of Murphy and similarly situated federal officers whose official tenure, unlike that of members of Congress, is not for a definite term, the relevant facts indicate an intention to acquire a domicile in the District and a resulting liability to taxation.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. DUE PROCESS OF LAW

1. *Freedom of Speech and Press.* The most important decision involving free speech and press was handed down in the joint case of Bridges v. California and *Times-Mirror* Co. v. Supreme Court of California.[32] In a five-to-four decision, the Court held that judgments in the state court holding Bridges and the newspaper in contempt of court for publishing statements concerning pending litigation abridged their freedom of speech and press in violation of the due process clause of the Fourteenth Amendment. The facts were as follows. While a motion for a new trial was pending in a case involving a dispute between an A. F. of L. union and a C. I. O. union of which Harry Bridges was an officer, he sent to the Secretary of Labor a telegram, which he released also to the press, declaring the judge's decision "outrageous," and further stating: "Attempted enforcement of Schmidt decision will tie up port of Los Angeles and involve entire Pacific Coast . . .

[31] 314 U.S. 441, 1941. [32] 314 U.S. 252, 1941.

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[C. I. O. union] does not intend to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board." The action against the newspaper was based on the publication of three editorials in the *Los Angeles Times*. Two members of a labor union had been found guilty of assaulting non-union truck drivers, and the date for sentence had been set by the court. The most questionable editorial closed with these sentences: "Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute-mill." The Supreme Court's opinion reversing the judgments for contempt was written by Mr. Justice Black. The argument ran as follows. No California statute forbids this type of publication. To hold the publications unlawful, it must, therefore, appear that "they are of such a nature as to create a clear and present danger that they will bring about the substantive evils [obstruction of justice]." While general in terms, the "clear and present danger" test is appropriate to the present case, and the decisions of the Court make it clear that in applying it "the substantive evil must be extremely serious and the degree of imminence [of danger] extremely high before utterances can be punished." The fact that the summary power to punish as contempt out-of-court publications tending to obstruct justice has long been embedded in the common law does not place it beyond the reach of the First Amendment. It may not be so used as to abridge freedom of speech and press. The fair and orderly administration of justice must be fully protected, but it is not threatened by either of the publications here involved. The *Los Angeles Times* editorial was in line with the long-standing policy of the paper in regard to labor issues; it was what anyone in the community would expect the paper to say; and "to regard it, therefore, as in itself of substantial influence upon the course of justice would be to impute to judges a lack of firmness, wisdom, or honor which we cannot accept as a major premise." The Bridges telegram may also be "dismissed as negligible" in so far as any coercive influence on the court is concerned. It threatened no illegal action on the part of Bridges, and in predicting a strike it told the judge nothing he did not already know.

Mr. Justice Frankfurter filed a long dissenting opinion in which Chief Justice Stone and Justices Roberts and Byrnes concurred. He emphasized the great importance of protecting the administration of justice from outside pressure and coercion, declared that the Court's decision removes that protection, and attacked the Court's refusal to allow the California courts, 3,000 miles away, to judge the necessity of punishing the publications here involved. He took sharp issue with the majority as to the threatening and coercive tendency of the publications.

The Court has repeatedly held that freedom of the press includes the

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right to distribute propagandist literature upon the public streets.[33] In Valentine v. Chrestensen,[34] this doctrine is restricted by holding that it does not extend to commercial advertising. Chrestensen was informed by the New York police that under the Sanitary Code he could not distribute advertising handbills, but that he might freely distribute handbills solely devoted to "information or a public protest." He accordingly prepared double-faced handbills. On one side was commercial advertising; on the other was a protest against the action of the City Dock Department in refusing to let him moor his boat at a city pier. The Court found no abridgment of freedom of press in forbidding him to circulate these handbills. The inclusion of the protest against official conduct was an obvious subterfuge. "If that evasion were successful, every merchant who desires to broadcast advertising leaflets in the streets need only append a civic appeal, or a moral platitude, to achieve immunity from the law's command."

In Chaplinsky v. New Hampshire,[35] the appellant, a member of Jehovah's Witnesses, was convicted under a New Hampshire statute providing that "no person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend, or annoy him, or to prevent him from pursuing his lawful business or occupation." Chaplinsky got into an argument with the police over his activities in distributing literature on the public streets and in publicly denouncing all religion as a "racket." He was warned by the city marshal that he was creating a disturbance, although no threat to arrest him was made. The complaint charged that in response to this warning Chaplinsky "did unlawfully repeat the words following, addressed to the complainant, that is to say, 'you are a God damned racketeer' and 'a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists,' the same being offensive, derisive, and annoying words and names." The Court, speaking through Mr. Justice Murphy, held that Chaplinsky's utterances were not protected by the First or Fourteenth Amendment as an exercise of freedom of speech or religion. The New Hampshire statute did not go beyond forbidding such utterances in public places as would be likely to result in breaches of the peace. In the words of the state court, "the English language has a number of words and expressions which by general consent are 'fighting words' when said without a disarming smile. . . . Such words, as ordinary men know, are likely to cause a fight." They are not protected by the constitutional guarantee of freedom of speech.

[33] Lovell v. Griffin, 303 U.S. 444, 1938, commented on in this REVIEW, Vol. 33, p. 259; Schneider v. Irvington, 308 U.S. 147, 1939 (see this REVIEW, Vol. 35, p. 267).
[34] 316 U.S. 52, 1942. [35] 315 U.S. 568, 1942.

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Nor is the statute so vague and indefinite in its definition of crime as to render a conviction under it a denial of due process.

In Thornhill v. Alabama,[36] the Court laid down the broad principle that a blanket prohibition of all picketing, including peaceful picketing, invalidly abridges freedom of speech and press. Later decisions have dealt with the application of that doctrine to concrete cases of picketing. In Carpenters and Joiners Union v. Ritter's Cafe,[37] the union had been enjoined under the Texas anti-trust statutes from picketing Ritter's restaurant in protest against Ritter's having contracted for the erection of a building elsewhere in the city by a contractor who employed non-union labor. The Texas court held that the picketing, admittedly peaceful, could not lawfully be carried on at a place remote from the situs of the actual labor dispute. Had the picketing occurred where the building was going up, it would have been valid; but since it took place at Ritter's restaurant, it unlawfully interfered with his business. The Court, through Mr. Justice Frankfurter, held that the union's constitutional rights were not impaired by the injunction. It is a proper exercise of the state's police power to confine picketing to the actual situs of a labor dispute. "The recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute." Four justices dissented in two opinions written by Justices Black and Reed on the ground that peaceful picketing, as an exercise of freedom of speech, is entitled to protection wherever it may be carried on.[38]

2. *Freedom of Religion.* Jehovah's Witnesses continue to bring to the Court important cases involving civil liberty. Jones v. Opelika,[39] combined with two similar cases, raised the question of the constitutionality of collecting non-discriminatory license taxes on the sale of printed matter from those who sell religious books and pamphlets as a means of making religious converts and of financing the spread of their doctrine. The Opelika (Alabama) ordinance imposed an annual license fee of $10 upon book dealers and $5 upon transient agents, dealers, or distributors of books. Casa Grande (Arizona) required a quarterly license fee of $25 from transient merchants, peddlers and street vendors. Forth Smith (Arkansas) required a license fee from all peddlers at the rate of $2.50 per day or $25 per month. In each of these cities Jehovah's Witnesses were arrested for refusing to pay the fees required. None of the ordinances dis-

[36] 310 U.S. 88, 1940. See this REVIEW, Vol. 35, p. 268.

[37] 315 U.S. 722, 1942.

[38] Other cases involving the legality of picketing are Hotel & Restaurant Employees' International Alliance v. Wisconsin Employment Relations Board, 315 U.S. 437, 1942; and Bakery & Pastry Drivers, etc., v. Wohl, 315 U.S. 769, 1942.

[39] 316 U.S. 584, 1942.

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criminated against the sale of religious literature, nor were they drafted with religious literature in mind. They were ordinary taxes on the privilege of peddling. Five members of the Court, speaking through Mr. Justice Reed, held these ordinances validly enforceable. The petitioners had not attacked the amount of the taxes, but had denied the right of the cities to tax them at all. The Court therefore did not discuss the validity of burdensome taxes on the distribution of religious literature. "The sole constitutional question considered is whether a non-discriminatory license fee, presumably appropriate in amount, may be imposed upon these activities." City ordinances which prohibit the distribution of literature have been held invalid. But when religious advocates resort to commercial methods to raise funds for religious propaganda, it is natural and proper to subject them to the payment of a fee. None of the three ordinances attempts to censor the literature sold or to regulate in any way the activities of the sellers. The fees involved were not shown to be larger than license fees upon commercial activities may reasonably be. "The First Amendment does not require a subsidy in the form of fiscal exemption." Answering the argument that the aggregate of small fees collected in each of the many communities which the petitioners might visit would amount to a crushing burden upon their activities, the Court said that if the fees are commensurate with the activities which are licensed, which was not denied, the petitioners will "have enjoyed a correlatively enlarged field of distribution." The Opelika licenses were subject to revocation in the discretion of the municipal authorities, but this power of arbitrary revocation is irrelevant since the petitioners never got a license, and were therefore not injured by this provision.

Chief Justice Stone dissented strongly. The revocation provision of the Opelika ordinance, just mentioned, is a more serious denial of freedom of press and religion than a provision making the granting of licenses subject to the arbitrary discretion of the licensing officials. In the latter type of case, held invalid in Lovell v. Griffin,[40] "at least the defendant might have been given a license if he had applied for it. . . . Here the defendant Jones was prohibited from distributing his pamphlets at all unless he paid in advance a year's tax for the exercise of the privilege and subjected himself to termination of the license without cause, notice, or hearing, at the will of city officials." The validity of the three ordinances is not supported by calling the required payments "fees." They are not designed to cover any administrative costs. They do not impose any regulations upon the licensees. Their size bears no relation to the extent of the activities carried on under the license, nor to the amounts of money received by the licensee. They are taxes levied upon the activities carried on. They are not only taxes upon the dissemination of religious literature, but taxes which are in

[40] 303 U.S. 444, 1938. See this REVIEW, Vol. 33, p. 259.

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effect prohibitive. The fact that they are non-discriminatory does not help. "The First Amendment is not confined to safeguarding freedom of speech and freedom of religion against discriminatory attempts to wipe them out. On the contrary, the Constitution, by virtue of the First and Fourteenth Amendments, has put those freedoms in a preferred position." Resorting to past history, the Chief Justice observes: "It seems fairly obvious that if the present taxes, laid in small communities upon peripatetic religious propagandists, are to be sustained, a way has been found for the effective suppression of speech and press and religion despite constitutional guaranties. The very taxes now before us are better adapted to that end than were the stamp taxes which so successfully curtailed the dissemination of ideas by eighteenth-century newspapers and pamphleteers, and which were a moving cause of the American Revolution. . . . Vivid recollections of the effect of those taxes on the freedom of press survived to inspire the adoption of the First Amendment."

Justices Black, Douglas, and Murphy joined in the opinion of the Chief Justice, and Mr. Justice Murphy wrote a separate dissenting opinion with which the Chief Justice and Justices Black and Douglas concurred. Mr. Justice Black, joined by Justices Douglas and Murphy, added a separate statement in which they said: "This is but another step in the direction which Minersville School District v. Gobitis[41] took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since we joined in that opinion in the Gobitis case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided." Such a gratuitous statement by members of a majority of the Supreme Court is without precedent. It has resulted in re-opening the issue involved in the Gobitis case, and the Supreme Court has granted certiorari in another case presenting the flag salute problem for re-argument.

3. *Criminal Due Process.* The notorious California "rattlesnake murder" case brought two questions of criminal due process to the Supreme Court. This is the case of Lisenba v. California.[42] The defendant was convicted of first-degree murder for having killed his wife in order to collect insurance which he had previously taken out upon her life. The state's case was that, with the aid of an accomplice, he first tried to murder his wife by tying her blindfolded to a table and then releasing in the room rattlesnakes which were expected to bite and kill her. When this method was unsuccessful, he drowned her in a fish pool by holding her head under water. The defendant claimed he had been denied due process of law on two grounds. First, he was twice questioned unlawfully by police officers for long periods of time, and later made a confession which was used

[41] 310 U.S. 586, 1940. See this REVIEW, Vol. 35, p. 269.
[42] 314 U.S. 219, 1941.

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against him and led to his conviction. Second, at his trial the state produced two rattlesnakes, identified as the ones purchased by the defendant, and the exhibition of these in the court room inflamed the jury against him, caused alarm and panic among those present, including the jury, and "so infused the trial with unfairness as to deny due process of law." The Court, with two justices dissenting, held that the use of the defendant's confession did not under the circumstances deny due process. While illegal "third degree" methods were used, it did not appear that they induced the confession. The introduction of the snakes as evidence, while "shocking to the sensibilities of those in the courtroom," did not render the trial so unfair as to deny due process.

In Betts v. Brady,[43] a divided Court held that the requirement of due process of law does not under all circumstances compel a state to appoint counsel at state expense for an indigent defendant. Betts was indicted for robbery in Maryland. Due to lack of funds, he was unable to hire a lawyer, so informed the judge, and requested that the court appoint one for him. The judge refused on the ground that it was not customary in Maryland to appoint counsel for indigent defendants except in prosecutions for murder and rape. Betts elected to be tried without a jury, and the judge found him guilty. Speaking through Mr. Justice Roberts, the Court held that the Sixth Amendment, which guarantees assistance of counsel, applies only in the federal courts, and that the due process clause of the Fourteenth Amendment does not "incorporate as such the specific guarantees found in the Sixth Amendment." The requirements of due process of law are "less rigid and more fluid" than those in the federal Bill of Rights. "Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial." In the present case, as the record showed, the rights and interests of Betts had been adequately cared for. This distinguished the case from Powell v. Alabama,[44] in which the defendants in the Scottsboro case were held to have been denied due process by the trial court's failure to provide them with counsel at state expense. That this right of counsel at state expense is not under all circumstances deemed a fundamental right is shown by the fact that a number of state constitutions do not recognize it, and that it was not required by common law. There is evidence to show that where state constitutions have incorporated the terms used in the Sixth Amendment, the purpose was only to establish what the common law had forbidden, namely, the right of a defendant to be represented in court by a lawyer of his own choice. Mr. Justice Black, joined

[43] 316 U.S. 465, 1942.

[44] 287 U.S. 45, 1932. See this REVIEW, Vol. 28, p. 57.

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by Justices Douglas and Murphy, dissented strongly on the ground that the state's refusal to provide Betts with an attorney was a denial of a fundamental right regarded as "shocking to the universal sense of justice," and therefore a violation of due process of law.[45]

4. *Due Process in State Taxation.* The Court's recently developed doctrine that the Fourteenth Amendment provides no immunity from double taxation was strikingly applied in State Tax Commission of Utah v. Aldrich.[46] Edward N. Harkness died in 1940, domiciled in New York. As part of his estate, he left 10,000 shares of common stock and 400 shares of preferred stock of the Union Pacific Railroad Company, a Utah corporation. The transfer of these shares at death was clearly taxable under the New York estate tax statute. The Court, speaking through Mr. Justice Douglas, held that their transfer was also taxable by the state of Utah, since they were shares of a Utah corporation. This is true even though the value of the shares is due only in a very minute degree to any business carried on by the corporation within the state of Utah. The Court reiterates its earlier statement that "intangibles are but relationships between persons, natural or corporate." They are not things which exist only in one place. They are properly taxable by each and every government which exerts control over them or affords them protection. The present decision necessitated the overruling of First National Bank v. Maine.[47] Mr. Justice Jackson, joined by Mr. Justice Roberts, dissented.

2. EQUAL PROTECTION OF THE LAWS

1. *Exclusion of Negroes from Jury.* It is well established that the exclusion of Negroes from either a grand or petit jury because of their race deprives a Negro defendant brought before it of the equal protection of the laws.[48] In Hill v. Texas,[49] such discrimination was charged. The state court held that Hill had not sustained the burden of proof to show that the failure to put Negroes on the grand jury which indicted him was due to the fact that they were Negroes. His allegations were based upon statistics showing that for at least sixteen years no Negroes had been called for grand jury service in the county and that there were hundreds of Negroes whose education would presumably qualify them for jury service. The Court held that Hill was not obliged to prove cases of actual personal discrimination in the drawing of his jury. He was obliged merely to make out a *prima facie* case of the discriminatory exclusion of Negroes as a general policy, and this he had adequately done.

[45] In two cases involving no new principles, the Court continued its campaign against third-degree methods of securing evidence in criminal trials. These were Ward v. Texas, 316 U.S. 547, 1942; Waley v. Johnston, 316 U.S. 101, 1942.

[46] 316 U.S. 174, 1942.

[47] 284 U.S. 312, 1932. See this REVIEW, Vol. 27, p. 53.

[48] Norris v. Alabama, 294 U.S. 587, 1935. See this REVIEW, Vol. 30, p. 83.

[49] 316 U.S. 400, 1942.

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2. *Oklahoma Sterilization Law.* In Skinner v. Oklahoma,[50] the Oklahoma Sterilization Law was held invalid on the ground that it contained exemptions so arbitrary as to deny the equal protection of the laws. Mr. Justice Douglas wrote the opinion. The general validity of the act, apart from the unlawful discrimination involved, was not considered by the Court. The statute provided for the sterilization of "habitual criminals," persons thrice-convicted for felonies involving moral turpitude. It set up elaborate procedural requirements, including jury trial, of the question whether the criminal "may be rendered sexually sterile without detriment to his or her general health." However, "offenses arising out of the violation of the prohibitory laws, revenue acts, embezzlement or political offenses, shall not come or be considered within the terms of this act." Skinner was convicted in 1926 of stealing chickens, in 1929 of robbery, and in 1934 of robbery again, and an order for his sterilization was issued. In Oklahoma, grand larceny is a felony when the property taken exceeds $20. The embezzlement of property worth $20 is also a felony. "A clerk who appropriates over $20 from his employer's till and a stranger who steals the same amount are thus both guilty of felonies. If the latter repeats his act and is convicted three times, he may be sterilized. But the clerk is not subject to the pains and penalties of the act, no matter how large his embezzlements nor how frequent his convictions." The Court found this discrimination so arbitrary as to deny the equal protection of the laws guaranteed by the Fourteenth Amendment.

II. FEDERAL AND STATE RELATIONS

1. STATE TAXATION OF FEDERAL AGENCIES

In Alabama v. King & Boozer,[51] a unanimous Court held that a state may validly levy a sales tax on the purchase of materials by a contractor for use in building an army camp for the United States under a cost-plus contract. Congress has passed no legislation which would give immunity from state taxation to contractors under "cost-plus" contracts with the Federal Government. Nor does the Constitution create such tax immunity. To hold the contractor liable to the tax is to apply the same principle which, in James v. Dravo Contracting Co.,[52] held a government contractor liable to a state tax on his gross receipts under the contract. "So far as such a non-discriminatory state tax upon the contractor enters into the cost of the materials to the government, that is but the normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of one to be free of taxation by the other does not spell immunity from paying the additional costs, attributable to the taxation of those who furnish supplies to the government and who have

[50] 316 U.S. 535, 1942. [51] 314 U.S. 1, 1941.
[52] 302 U.S. 134, 1937. See this REVIEW, Vol. 33, p. 264.

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been granted no tax immunity. So far as a different view has prevailed, see Panhandle Oil Company v. Mississippi,[53] and Graves v. Texas Co.,[54] . . . we think it no longer tenable." It will be recalled that the Panhandle Oil Company case, in 1928, had held void a state sales tax applied to the sale of oil to the Federal Government. It was in the course of a vigorous dissent in this case that Mr. Justice Holmes, referring to Marshall's famous epigram that "the power to tax involves the power to destroy," turned his almost equally famous epigram that "the power to tax is not the power to destroy while this Court sits." Curry v. United States[55] differs from Alabama v. King & Boozer only in the fact that the state tax involved was a "use" tax "in respect of materials purchased in another state for use in performing a 'cost-plus' contract with the United States." The constitutional question involved was the same, and the tax was upheld.

In Federal Land Bank v. Bismark Lumber Co.,[56] the Court unanimously held invalid the attempt to collect from the bank a North Dakota sales tax on purchases made from the lumber company for necessary improvements on farms which the bank had acquired by foreclosure proceedings. The bank is a government corporation created under the Federal Farm Loan Act of 1916, and the statute confers on these banks immunity from state taxation, with certain exceptions not here relevant. The state contended that Congress could constitutionally confer tax immunity only upon the "governmental" functions performed by the bank, and that the functions it was here performing were not "governmental," but were "incidental to its business of lending money, an essentially private function." The immunity, therefore, does not exist. This was an effort to read into the law of federal immunity from state taxation the rule of South Carolina v. United States,[57] many times reaffirmed, that states are immune from federal taxation only with respect to their governmental, and not their private or proprietary, functions. The Court refused to do this. It declared: "The Federal government is one of delegated powers, and from that it necessarily follows that any constitutional exercise of its delegated powers is governmental. . . . It also follows that when Congress constitutionally creates a corporation through which the Federal government lawfully acts, the activities of such corporation are governmental." This rule was announced by Mr. Justice Stone in Graves v. New York,[58] in which state and federal salaries were held liable to intergovernmental taxation. While not dictum in that case, it had not lain at the root of the Court's decision as it did in the present case.

[53] 277 U.S. 218, 1928. See this REVIEW, Vol. 23, p. 99.
[54] 298 U.S. 393, 1936. See this REVIEW, Vol. 31, p. 278.
[55] 314 U.S. 14, 1941. [56] 314 U.S. 95, 1941.
[57] 199 U.S. 437, 1905.
[58] 306 U.S. 466, 1939. See this REVIEW, Vol. 34, p. 281.

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In Standard Oil Co. of California v. Johnson,[59] the Court held that United States Army Post Exchanges "as now operated, are arms of the government deemed by it essential for the performance of governmental functions. They are integral parts of the War Department, share in fulfilling the duties intrusted to it, and partake of whatever immunities it may have under the Constitution and federal statutes." The California sales tax on gasoline cannot, therefore be collected on sales made by the company to the post exchanges in the state.

2. STATE TAXATION AND INTERSTATE COMMERCE

A Tennessee tax upon the net income of a pipe line company engaged in interstate commerce, when the income is derived from sales of natural gas within the state, does not violate the commerce clause. This is the case of Memphis Natural Gas Co. v. Beeler.[60] The company brings natural gas through pipe lines from Louisiana into Tennessee. It delivers the gas to distributing companies, which sell it to local consumers. The pipe line company and the distributing companies have a joint agreement whereby the proceeds from the sale of the gas to consumers, after the deduction of various costs, are divided between them. The court held that the pipe line company under this joint agreement was engaged in business within the state, and was accordingly subject to the state's taxing power. The tax hit nothing but net earnings properly attributable to Tennessee, and in no way infringed the Commerce Clause.

3. STATE POLICE POWER AND INTERSTATE COMMERCE

The Anti-Okie Law Case. Edwards v. California[61] held invalid as a barrier to interstate commerce the so-called "anti-Okie law" of California penalizing the bringing into the state of indigent persons. The importance and sweep of the social problem involved lift this case out of the usual category of conflicts between state police power and interstate commerce. The facts in the case were simple. The California statute provides: "Every person, firm, or corporation . . . that brings or assists in bringing into the state any indigent person who is not a resident of the state, knowing him to be an indigent person, is guilty of a misdemeanor." Edwards, a citizen of the United States and a resident of California, drove into Texas for the purpose of bringing his brother-in-law, Frank Duncan, back to California with him. Edwards found upon arrival in Texas that Duncan had last been employed by the W. P. A. and knew, therefore, that he was an indigent person. The two men drove to Edwards' home in California, Duncan arriving without funds and with no job. He was unemployed for ten days and then secured financial assistance from the Farm Security Administra-

[59] 316 U.S. 481, 1942. [60] 315 U.S. 649, 1942.
[61] 314 U.S. 160, 1941.

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tion. It was not disputed that Edwards had violated the statute. He alleged that the statute violated several provisions of the Federal Constitution. The case was argued twice in the Supreme Court and aroused great interest. More than 20 states had statutes similar to that of California. The American Civil Liberties Union presented a brief, as did the attorney for the Select Committee of the House of Representatives to Investigate Interstate Migration of Destitute Citizens.

The Court held unanimously that the California statute was unconstitutional, but the justices differed sharply as to the grounds upon which that result should rest. Five members of the Court, in an opinion by Mr. Justice Byrnes, held the act invalid as an obstruction of interstate commerce. The opinion runs as follows. The transportation of passengers across state lines is interstate commerce. The states may, in matters of local concern, exercise their police powers in ways which affect interstate commerce, but there are clear limits to their authority to do so. "None is more certain than the prohibition against attempts on the part of any single state to isolate itself from difficulties common to all of them by restraining the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute. . . . We think this statute must fail under any known test of the validity of state interference with interstate commerce." The migration of large numbers of persons across state lines creates problems of national concern. If this interstate migration is to be regulated, it must be by uniform national policy. The problem "does not admit a diverse treatment by the several states." The Court has always held those aspects of interstate commerce free from state control which, if regulated at all, require uniform regulation by a single authority. In New York v. Miln,[62] in 1837, Mr. Justice Barbour observed that it might be necessary for a state "to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts. . . ." The Court is not bound by this language. Even so, it is doubtful if Duncan is a "pauper," and "we do not think it will now be seriously contended that because a person is without employment and without funds he constitutes a 'moral pestilence.' Poverty and immorality are not synonymous."

A concurring opinion by Mr. Justice Douglas, with which Justices Black and Murphy agreed, vigorously objects to grounding the Court's decision on the commerce clause. It insists that "the right to move freely from state to state is an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference." It was clearly held in Crandall v. Nevada,[63] before the Fourteenth Amendment was adopted, that this right of free migration

[62] 11 Peters 102, 1837. [63] 6 Wallace 35, 1868.

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was "a right fundamental to the national character of our Federal government," and that doctrine has been affirmed in later decisions. To allow the states to restrict the free movement of those who are poor and destitute would engraft an exception on the rights of national citizenship which would "contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government."

Mr. Justice Jackson concurred separately. He admitted that the Court's decision could, under the authorities, rest on the commerce clause, but preferred to base it on the privileges and immunities clause of the Fourteenth Amendment. "The migrations of a human being, of whom it is charged that he possesses nothing that can be sold and has no wherewithal to buy, do not fit easily into my notions as to what is commerce." The Supreme Court has held that an alien admitted to this country under federal law enjoys the right "of entering and abiding in any state of the Union." "Why we should hesitate to hold that Federal citizenship implies rights to enter and abide in any state of the Union at least equal to those possessed by aliens passes my understanding. The world is even more upside down than I had supposed it to be, if California must accept aliens in deference to their Federal privileges, but is free to turn back citizens of the United States unless we treat them as subjects of commerce."

In Cloverleaf Butter Co. v. Patterson,[64] the Court held in a five-to-four decision that the exercise by Congress of its authority under its taxing and commerce powers to control the purity of renovated butter sold in interstate commerce rendered invalid a state law setting up standards of purity for "packing stock butter" out of which the renovated butter is made. By provisions of the Internal Revenue Code, the entire process of manufacturing renovated butter is brought under close federal supervision, and renovated butter not meeting federal standards of purity is barred from interstate commerce. The federal laws, however, do not specifically apply to the ingredients of renovated butter, of which "packing stock butter" is the most important. Did Congress, by occupying as much of the field of regulation as it has, intend to exclude from that field any competing or supplementary state regulation? The Court, speaking through Mr. Justice Reed, held that it did. The authority of the state to confiscate packing stock butter interferes with the purposes of the federal legislation. "Congress hardly intended the intrusion of another authority during the very preparation of a commodity subjected to the continuous surveillance and comprehensive specifications of the Department of Agriculture." In a dissenting opinion by Chief Justice Stone, the minority urged the lack of conflict between the state and federal regulations. They referred to the long-continued and friendly coöperation between the

[64] 315 U.S. 148, 1942.

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federal and state administrative agencies in this field, and rejected the assumption that Congress intended to prevent the states from passing the supplementary regulations here involved. Congress obviously could oust the states from this field of legislation by making its own statutes more specific. Congress, and not the Court, should do this, if it is to be done.

Duckworth v. Arkansas[65] involved an Arkansas statute which forbids any person to ship any distilled spirits into the state without first securing a permit from the state commissioner of revenue. Duckworth was arrested in Arkansas while transporting without an Arkansas permit a truckload of distilled spirits from Illinois to Mississippi. The Court upheld his conviction. Since the liquor was admittedly intended for illegal use in Mississippi, the case could have been based on the Twenty-first Amendment. The Court, however, preferred to hold that the Arkansas act does not impose an unconstitutional burden upon interstate commerce. It requires those engaged in transporting liquor across the state to establish their identity, record their point of destination, and thus allow state authorities to take proper measures to see that the liquor is not diverted locally. This is held to be a minor inconvenience imposed on interstate commerce in order to protect the interest of the state. In a concurring opinion, Mr. Justice Jackson urged that the case should have rested on the Twenty-first Amendment and protested against the upholding of state trade barriers, any one of which may be petty, but which collectively are developing a strangling effect upon interstate commerce.

In Illinois Natural Gas Co. v. Central Illinois Public Service Co.,[66] the Court held that the Illinois Public Service Commission was without power to order a pipe line company bringing gas into the state through interstate commerce to divert a portion of that gas to aid another company in supplying its consumers. Whether the state commission could have acted in the absence of federal control of this field, the Court did not discuss. It held that the Natural Gas Act of 1938 gives the Federal Power Commission full authority to regulate extensions of gas transportation facilities and their physical connections with those of distributors as well as the sale of gas to them. Application should have been made to the Federal Commission for the needed extension, for the exercise of federal power has ousted the state from this field of regulation.

III. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

In an important case under the contract clause, the Court held valid a New Jersey statute of 1931 exercising state control over insolvent municipalities. This was the case of Faitoute Iron & Steel Co. v. Asbury Park.[67]

[65] 314 U.S. 390, 1941. [66] 314 U.S. 510, 1942. [67] 316 U.S. 502, 1942.

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The plan created by the statute provided for the adjustment or composition of the claims of all the city's creditors, the approval of this arrangement by eighty-five per cent in amount of the creditors and by the Municipal Finance Commission set up for the administration of the act. It must be shown that the city is unable to pay its debts in full, that the composition is substantially measured by its ability to pay, that it is in the interest of all the creditors affected, that it is not detrimental to other creditors of the municipality, and that it does not involve any reduction of the face value of the debts. If the plan is approved and meets all these tests, it becomes binding upon all of the city's creditors. Such a plan was set up to deal with the finances of the City of Asbury Park, which had become insolvent. Under the plan, the outstanding bonds were refunded, and creditors received in lieu of their original bonds new ones bearing a lower interest rate and maturing at a later date. A unanimous Court, speaking through Mr. Justice Frankfurter, found no impairment of the obligation of the city's contracts. Urging that practical realism is necessary in dealing with the situation presented by this insolvent municipality, the opinion states: "Impairment of an obligation means refusal to pay an honest debt; it does not mean contriving ways and means for paying it. The necessity compelled by unexpected financial conditions to modify an original arrangement for discharging a city's debt is implied in every such obligation for the very reason that thereby the obligation is discharged, not impaired. . . . The payment of the creditors was the end to be obtained, but it could be maintained only by saving the resources of the municipality—the goose which lays its golden eggs, namely, the taxes which alone can meet the outstanding claims."

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AMERICAN GOVERNMENT AND POLITICS

THE SECOND SESSION OF THE SEVENTY-SEVENTH CONGRESS

(January 6–December 16, 1942)

FLOYD M. RIDDICK
Congressional Intelligence

The course of affairs in the second session of the Seventy-seventh Congress can best be differentiated from that of all recent years if examined with the thought that the United States is in an "all-out" war. That was how the President presented the situation to Congress on January 6 in his annual message on the state of the Union.[1] And that was the phrase frequently used throughout the year by Representatives and Senators as an argument for or against enacting controversial bills, delegating unprecedented regulative powers, or appropriating many billions of dollars to defray governmental expenses.

On the other hand, while all of the recommendations for legislation embodied in the President's message were designed to bring the war more quickly to a close, Congress was asked by the Administration at various times during the year for the enactment of measures not related to the defense program, as the proposals to "rid Congress of trivia"[2] and for settlement of claims of American nationals against the government of Mexico.[3] The House and Senate, likewise, of their own accord, troubled themselves with such matters as the repeal of poll tax laws, the right of Senator Langer to his seat in the Senate, and the so-called "Congressional pension bill."

Changes in leadership in both chambers during the session were insignificant. Nominally, Representative Ramspeck was elected by Democrats of the House as their whip to replace the late Representative Patrick Boland. Also, several members of both houses rose in prominence because of the opposition which they voiced against particular bills or the way things were being run; but very few, if any, assumed for the first time a rôle of leadership in either body.

Procedure: General Aspects. By and large, the activities of both houses could be characterized, comparatively speaking, with the word "brevity." It is true that the session ran from January 5 through December 16, with the House and Senate in session 194 and 169 days, respectively. Hardly more than half of the sittings of either chamber, however, were devoted to actual legislative activity.

[1] House Doc. 501. [2] House Doc. 562. [3] House Doc. 722.

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The following table gives categorically, for the last three sessions, the number of bills debated by either chamber for three or more printed pages each of the *Congressional Record:*

TABLE I.

Pages Debated	76TH CONGRESS THIRD SESSION		77TH CONGRESS FIRST SESSION		77TH CONGRESS SECOND SESSION	
	House	*Senate*	*House*	*Senate*	*House*	*Senate*
3– 5	7	7	7	10	20	13
5– 10	25	13	20	14	26	16
10– 15	14	16	24	9	10	5
15– 20	12	3	9	7	13	2
20– 25	4	3	15	7	5	5
25– 30	14	4	9	5	6	5
30– 35	8	3	8	2	3	1
35– 40	4	4	3	2	4	0
40– 45	2	2	1	2	3	1
45– 50	2	1	3	1	1	0
50– 60	5	6	2	0	5	4
60– 70	4	1	1	2	1	2
70– 80	2	5	5	1	0	1
80– 90	1	1	0	0	1	0
90–100	3	0	1	0	1	1
100–125	2	3	3	1	0	3
125–150	0	2	1	1	2	1
150–175	0	2	2	0	0	3
175–200	2	1	1	1	1	0
200–300	3	0	1	0	0	0
300–400	1	2	0	1	0	0
400–500	0	0	0	0	0	0
500–600	0	0	0	1	0	0
600–700	0	1	0	0	0	0
Totals[4]	115	80	124	67	102	63

As shown in the above table, the number of bills debated for three or more pages in either house during the last three sessions of Congress continually decreased. The House debated eight bills for more than 100 pages in both the Third Session of the Seventy-sixth Congress and the First Session of the Seventy-seventh, as compared to only three during the past year. The Senate so debated eleven bills in the Third Session of the Seventy-sixth Congress, five in the First Session of the Seventy-seventh, and seven during the past year. The longest debated subject before the

[4] These data are subject to very slight error, but certainly not enough to modify the picture. Bills were not tabulated unless the debate, as distinguished from printed pages incorporating the text of the bill, involved three printed pages.

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Senate, however, was the question of seating Senator Langer, which ran for a period of fourteen days, involving 277 pages of the *Record*. The Agriculture Appropriations Bill (HR 6709) was the bill discussed at greatest length. The proceedings on that bill in the House consumed portions of thirteen sittings, filling 291 pages of the *Record;* while in the Senate it consumed six sittings, filling 167 pages of the *Record*. The bill debated longest in the Senate was the 1942 Revenue Act, which involved 213 pages in the Senate, but only 111 in the House.

The sittings of the past year were, speaking generally, very short, and only on rare occasions did either chamber sit for as long as five hours in a single day. In fact, the procedure was more "streamlined" than in former years, particularly in the Senate, with the exception of the prolonged debate on the title of Senator Langer to his seat. Of course, this was to be expected in a war Congress. The proceedings of both chambers printed out 21,846 pages of the *Record* in the Third Session of the 76th Congress, 16,532 pages in the First Session of the 77th, and only 10,000 pages in the past session.[5]

Senate Procedure: The Senate met only 169 times, with Congress in session 345 days. Little or no legislative business was transacted at most sittings, lasting for only two to three hours each. Only 63 out of the 912 measures passed by this body, as shown in Table I, invoked any real debate. By and large, bills were called up and, without explanation or objection, approved. To put it more vividly, only about 34 measures during the year were debated for more than half an hour. Any Senatorial contributions to legislation were made in committees. And, judging from the remarks by Senator Carter Glass about the Senate Appropriations Committee, the committees were not over-indulgent. Note the following colloquy:

"MR. BYRD. I have no doubt that every official and every department will assert that the expenditures are necessary; but, nevertheless, we as Senators can have our own opinions as to this.

MR. BARKLEY. They should not only be required to assert the justification, but they should be required to prove it before the committees; and I have no doubt that they are prepared to prove it.

MR. GLASS. Mr. President, that takes us back to the question of what is a revenue bill, and whether an appropriation bill is a revenue bill. I say it is not. A revenue bill is a tax bill. However, the House has claimed the privilege of originating all appropriation bills, and the Senate committee does not know a damn thing about them. . . . The chairman of the Appropriations Committee disclaims knowing anything about them. . . ."[6]

The following remarks from the *Record* do not improve the picture:

[5] The appendix this year consumed 4,777 pages, as compared to 6,105 pages for the preceding session.

[6] *Cong. Record* (hereafter referred to as *C.R.*), 77-2, p. 4369, May 15, 1942.

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"MR. BYRD. The senator from Virginia regards this bill as one of the most important measures which has been presented to the Senate. The printed hearings show that only two hearings were held on this vitally important measure, involving in the future the expenditure of perhaps hundreds of millions of dollars. The proposed law would set the standard of compensation for a long time to come. The record—and that is the only thing by which the Senate can be guided—shows that only two Senators were present at the first meeting, and that the Senator from Florida, the chairman of the subcommittee, was the only Senator present at the second meeting."[7]

The carelessness displayed by the Senate and its committees in the disposition of bills is reflected in the following comments by the Senate minority floor leader, Mr. McNary:

". . . I desire to make myself clear. I shall object to the consideration of this bill today. . . . Here, Mr. President, we find on our desks, as rather a surprise to all of us, a bill carrying approximately $43,000,000,000 and containing 60 pages. It first reached our desks this morning, and the report consists of 92 pages, supported by brief hearings for 4 days. The able Senator now comes in and asks for immediate consideration of this proposal for a huge, unprecedented, unexampled expenditure of public funds. . . . In the name of decency, out of respect to orderly procedure, we should have at least one day to consider a bill proposing to appropriate $43,000,000,000. . . . Mr. President, I am sure we should be a little more deliberate in handling public funds . . . I am not impressed with the argument that all the money that goes into paying for the war is properly used and correctly used, and not wasted. . . ."[8]

Or again, by Senator Danaher during the discussion of the Poll Tax Bill:

"MR. DANAHER. Will the calendar number of the bill under consideration be stated for our information?

THE VICE PRESIDENT: The bill has just been reported. . . .

MR. DANAHER. Is a copy of the bill available so that we may examine it?

THE VICE PRESIDENT. The bill as reported contains so many amendments that the copy which is extant is more or less out of date. . . .

MR. DANAHER. . . Let me say that if we are to be called upon to pass upon amendments which are not even printed, to a bill which is not even on the calendar, it does seem to me that we might properly go one step further and ask ourselves how the Congress is assuming over the states the power to do things that the states themselves hitherto have not done in many an instance."[9]

[7] *C.R.*, 77-2, p. 5594, June 22, 1942.

[8] *C.R.*, 77-2, p. 5860, June 29, 1942.

[9] *C.R.*, 77-2, pp. 7081–7082, Aug. 17, 1942. See also pp. 817 (Jan. 28) and 8480 (Oct. 15).

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When the bill to "Repeal Poll Tax Laws" was under consideration in the Senate, the attendance was so poor that in order to get a quorum the chamber had to order the arrest of several members and have them brought to the bar.[10] This action vexed certain Senators and caused so much commotion that it reflected negatively on the disposition of the poll tax measure. Lack of proper attendance, however, was frequently the case. Often a quorum was not present nor a majority of the membership readily available. Adjournment would have been the only way out had some Senator raised the point of no quorum.[11]

The most unusual procedure in the Senate during the year occurred when that body was disposing of the Brooks amendment to the Second War Powers Bill, to extend free postage to members of the armed forces. The Democrats did not want such a feature added to the bill mentioned, but were prepared to see the idea written into law in a separate bill; and the Republicans caught the Democrats napping when the Brooks' amendment was offered. Attempts were made to get the matter referred to a committee, or at least to avoid action that would give the Republicans credit for the amendment. A roll call was demanded by the Republicans, however, and the clerk began to call the roll. The attempts made at the last minute to stop a vote on the amendment make interesting political reading:

"THE PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll, and Mr. Aiken voted in the affirmative when his name was called . . . (after interruption).

MR. AIKEN. Mr. President, I should like to inquire whether the roll call has been discontinued. My name had been called and I had voted.

THE PRESIDING OFFICER. The Chair recognized the Senator from Wyoming (after further interruption).

MR. LA FOLLETTE. If we are to reopen the debate on this matter, that is one thing. The Senator from Kentucky rose and interrupted the roll call.

MR. BARKLEY. Mr. President, I did no such thing. I was recognized before anyone answered to the roll call. . . .

THE PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll and Mr. Aiken voted in the affirmative. . . (after much discussion).

MR. MCNARY. What becomes of the rule which has been adhered to in the Senate without exception for a hundred years, that when a roll call has been started it is too late to recognize a Senator for the purpose of open and free debate?

THE PRESIDING OFFICER. The present occupant of the Chair has not been here for a hundred years.

[10] *C.R.*, 77-2, pp. 9130–9131, Nov. 14, 1942.

[11] *C.R.*, 77–2, p. 1006, Feb. 3, 1942. On this occasion, a quorum was lacking. According to one informant, the clerk counted one member not present to get a quorum.

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MR. MCNARY. That is very apparent. . . . The clerk started the second roll call; the Senator from Vermont (Mr. Aiken) voted when his name was called, and then the Chair deliberately recognized the Senator from Arizona.

THE PRESIDING OFFICER. That is not the understanding of the Chair. The Chair did order the roll call, but the roll call had not begun.

MR. AIKEN. Mr. President . . .

THE PRESIDING OFFICER. Whether the Chair recognized the Senator from Colorado or the Senator from Wyoming, the fact is that the Chair made the recognition before the Senator from Vermont had answered.

MR. AIKEN. I beg the Chair's pardon. I ask an opportunity to correct the *Record*. . . . I wish to say that I responded to the roll call not once, not twice, but three times. What I desire to know now is whether I have time to make a 'phone call before I vote the fourth time?"[12]

The amendment was, nevertheless, finally adopted.

In defense of its prerogatives, the Senate refused to approve Senate Resolution 248, to prohibit Senators from taking unlimited gasoline supply under the rationing program. The resolution was rejected on May 15 by a vote of 2 to 68[13] on the ground that it would reflect on the dignity of Senators.

House Procedure: The use of special rules in the House as compared to that of the previous session was curtailed.[14] Only 43 resolutions providing special consideration for the same number of pieces of legislation were reported by the Rules Committee, of which two were never called up. The House adopted 61 of them, in effect suspending its rules in each instance by adopting one of these simple resolutions setting up a special order of business (the immediate consideration of some particular bill).[15] Of the 43 rules reported, one was laid on the table because the bill for whose consideration it provided was called up under unanimous consent and passed; another died on the calendar without being called up.

An analysis of these rules shows that of the 41 rules adopted by the House, all but two provided for the immediate consideration of particular bills; 35 were open rules merely giving otherwise unprivileged bills the right of way for a hearing. Only six of them were closed, of which two were granted solely to waive points of order against their respective appropriation bills. All but two specified a maximum time for general debate of the particular bill (19 provided for one hour, 16 for two hours, two for four hours, one for one day, and one for three days).[16] Thirty-eight rules pro-

[12] *C.R.*, 77-2, pp. 798–800, Jan. 28, 1942. [13] See *C.R.*, 77-2, pp. 4364–65.

[14] During the first session of the Seventy-seventh Congress, 58 special rules were adopted by the House, and the next highest number of special rules to be adopted in any other session was 48, in the Third Session of the Seventy-sixth Congress.

[15] Two rules merely waived all points of order against two different appropriation bills.

[16] The time for debate was divided equally between those favoring and those opposing the bill.

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vided that their respective bills be read under the five-minute rule for amendments immediately following the general debate, "and that thereupon the committee rise and report the same to the House, with such amendments as may have been adopted." At that point, the previous question was to be considered "as having been ordered" on the bill.

The rule under which the 1943 tax bill was considered (incidentally, the bill which was debated for three days) provided that after general debate "the bill shall be considered as *having been read* for amendment. No amendment shall be in order to said bill except amendments offered by the Committee on Ways and Means, and said amendment shall be in order, any rule of the House to the contrary notwithstanding. Amendments offered by direction of the Committee on Ways and Means may be offered to any section of the bill at the conclusion of the general debate, but said amendments shall not be subject to amendment."

An examination of the *Record* will show that the House passed all but two of the bills called up under special rules. One was defeated, one was recommitted, six died in the Senate, three were vetoed, and 31 became law. These results prove that the Rules Committee is not a sole agent of the majority party; it does more than clear the way for legislation desired by the Administration and the party. Three bills expedited by this procedure in the House were vetoed.[17]

Calendar Wednesday was invoked on three different occasions, with seven committees receiving the call. Only two committees responded, presenting one bill each for consideration, both of which the House defeated. The Indian Affairs Committee called up an Indian claim bill which was defeated by a vote of 116 to 232,[18] and the Labor Committee presented HR 5638, "amending Employment Stabilization Act of 1931 relative to facilitating and expediting the selection, financing, and inauguration of public improvements, works, and related activities for post-war purposes," which was defeated by 104 to 252.

The suspension of rules procedure was resorted to only a very few times during the session, and fewer bills were approved by the House under this rule. The most important measure called up after this fashion (40 minutes debate, no amendments in order, and a two-thirds vote required) was the Florida Pipe Line-Barge Canal Bill (HR 6999). It was defeated on June 1 by 85 to 121. The bill later passed the House when called up under another procedure, and after seven amendments were added to it.

Of the 836 bills passed by the House, only 102 evoked enough debate to involve three or more printed pages, and 69 of these were debated for less

[17] See S 2600, Rubber Bill; S 2152, Rubber Bearing Plant Bill; and HR 6269, Registration of Persons Employed to Disseminate Propaganda in the U.S. It should be mentioned, however, that this last-mentioned bill was requested by the Department of Justice later to be vetoed by the President.

[18] See proceedings on HR 10.

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than 20 printed pages. The remainder of the 806 bills were hurriedly disposed of under unanimous consent procedure, primarily from the Private Calendar and the Unanimous Consent Calendar. It was a common practice for the chairmen of the various committees to ask unanimous consent to act on bills out of the regular order.

Five motions to discharge committees from consideration of bills were filed, four of which did not receive 218 signatures, the number necessary for entry on the calendar of such motions. One motion to discharge the Rules Committee from HR 1024 (repeal of poll tax laws) was placed on the Discharge Calendar, and later the bill passed the House.[19]

Legislative Activity. A total of 836 public and private laws were enacted, of which 453 were public and 383 private.[20] The House, however, passed only 806 bills and the Senate 912. The House had passed many in the First Session which were pending in the Senate, and which did not become law until the Second Session. Three bills died in conference, and many measures were lost in process of enactment after having passed one of the two chambers. The President vetoed forty-six bills, making a total of 579 bills vetoed by him since 1933, when he took office.

Appropriations. Appropriations for the session staggered the human imagination. In his budget message of January 7, the President submitted appropriation estimates totaling $56 billions and a tax request grossing $9 billions. Before the session closed, however, sufficient supplemental estimates were submitted to bring the total to $144,375,495,055. Congress finally appropriated a grand total of $147,071,208,961, as compared to $57,792,715,367 for the previous session.

The twenty-four appropriation bills enacted during the year provided for $144,620,472,000, exceeding the budget estimates by $4,467,021,000. The language of these bills was decidedly a product of the Bureau of the Budget; that is, neither the committees nor the chambers made many changes in the Bureau of the Budget's work. The House Appropriations Committee, acting as the economy agent, pared many of the estimates, later to be restored by the Senate. These twenty-four measures accounted for much of the work of the session, keeping the two appropriation committees extremely busy. The hearings before the House committee involved many thousand pages of printed testimony by government officials in defense of such huge expenditures. Comparable testimony before the Senate Appropriations Committee was less than one-fourth as voluminous. The length of consideration of the bills in the House and Senate was equally distributed. A brief history of the amount of each bill at various stages of enactment is effectively set forth in the following table:

[19] The bill never became law.

[20] In the First Session of the same Congress, a total of 649 public and private laws were enacted, of which 397 were public and 252 private.

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TABLE II. COMPARATIVE TABLE OF APPROPRIATION BILLS AND BUDGET ESTIMATES
(Figures Given are in Thousands of Dollars)

Bill	*Budget*	*Hs. Rep't*	*Passed Hs.*	*Sen. Rep't*	*Passed Sen.*	*Law*
Ind. Offices	2,101,167	2,096,138	2,096,048	2,125,985	2,126,042	2,090,885
Navy	23,739,140	17,722,565	17,722,565	23,738,865	23,738,865	23,738,865
State-Jus.-Com.	207,325	221,068	221,078	425,703	425,703	426,281
Treas. & P.O.	1,117,828	1,112,926	1,112,926	1,113,321	1,113,321	1,113,321
4th Supp. N.D.	12,556,672	12,555,872	12,556,672	12,556,672	12,556,672	12,556,672
First Defic.	161,883	160,590	160,412	163,794	163,806	163,780
5th Supp. N.D.	29,820,901	29,720,901	29,720,901	30,412,737	30,412,737	30,412,737
Agriculture	678,676	676,681	648,170	680,383	680,395	665,742
Interior	180,317	162,634	162,157	185,752	186,924	178,099
Legislative	28,850	27,581	27,463	27,547	27,884	27,570
War Civil Functions	365,580	350,650	333,950	367,039	367,039	343,938
6th Supp. N.D.	18,387,751	18,156,947	18,156,961	19,062,373	19,062,373	19,001,197
Funds for China	500,000	500,000	500,000	500,000	500,000	500,000
Dist. of Col.	56,865	56,118	56,129	56,314	56,329	56,306
Labor-Fed. Security	1,177,593	1,058,451	1,058,951	1,073,572	1,157,598	1,071,574
7th Supp. N.D.	664,445	654,999	654,999	654,999	655,074	655,074
D.C. Housing	50,000	29,500	29,500	43,000	43,000	32,500
Marine-War Risk	210,000	210,000	210,000	210,000	210,000	210,000
Office of Education	9,500	9,500	9,500	9,500	9,500	9,500
Em. Work Relief	282,767	282,584	282,584	282,584	282,584	282,584
2nd Deficiency	54,965	53,513	53,513	53,715	53,721	53,721
Military	39,532,309	42,820,003	42,820,003	42,820,003	42,820,003	42,820,003
First Supp. N.D.	1,916,496	1,810,487	1,808,669	1,856,801	1,863,961	1,858,939
2nd Supp. N.D.	6,352,421	6,236,956	6,236,956	6,341,196	6,352,234	6,351,184
TOTALS*	140,153,451	136,686,664	136,640,107	144,761,855	144,865,765	144,620,472

* For a thorough analysis of these appropriations, see *Appropriations, Budget Estimates*, etc., by Marcus C. Sheild, Clerk to House Committee on Appropriations, and Everard H. Smith, Clerk to Senate Committee on Appropriations, pp. 1–953.

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Legislation. During the session, less than 1,000 bills and resolutions were introduced in the Senate, as compared to 2,519 in the previous session; and in the House, about 1,500 were introduced as compared to 7,016 in the prior session. The Senate committees made 925 reports on legislation, and that body passed 912 bills. The committees of the House made 1,191 reports, and 806 bills were passed. These figures show that the number of bills handled by either chamber in the last three sessions has been continually decreasing,[21] with both bodies in session fewer and fewer days.

When the session closed, many bills were left unconsidered on the House and Senate calendars, and others had been acted on unfavorably. The House and Senate took 72 and 95 roll-call votes, respectively; consequently, most bills were passed in both chambers by a voice vote, division, or without objection.

The legislative program consisted primarily of disposing of appropriation measures and defense bills requested by some administrative agency or the President. Hearings were prolonged on some of these issues, but most of them passed either or both houses after very little discussion. Most bills considered by both houses were enacted, and only three were left in conference. A few, however, were lost along the way, including some that had been requested by the Administration, as was true of the war displacement benefits proposal.[22]

Perhaps two issues deserving particular mention here are the Poll Tax Bill[23] and the so-called Congressional Pension Bill.[24] The first-mentioned bill was introduced in the First Session, but was left lodged in committee. A discharge petition was filed to force the bill to the floor of the House. It was not until the latter part of the Second Session, however, when the petition received sufficient signatures to place the measure on the Discharge Calendar. Finally, the bill was discharged from committee, and the House passed it on October 13 by a vote of 352 to 84. Only Southern Representatives opposed the measure. The bill was then hurriedly reported out of the Senate Judiciary Committee in the absence of a quorum and taken up on the Senate floor under a threat by Southern Senators to filibuster the bill for the remainder of the session. After five days of debate, the bill was laid aside when a clôture motion was defeated by a vote of 41 to 37. By agreement, reached before this vote was taken, the bill was left on the calendar for the remainder of the session without further action.

The "Congressional Pension Clause," embodied in HR 3487, Civil Service Retirement Bill, was approved by the House by unanimous con-

[21] The House passed 1,127 bills in 1940, 1,043 in 1941, and 806 in 1942; the Senate passed 1,100 bills in 1940, 886 in 1941, and 912 in 1942.

[22] See HR 6559. [23] HR 1024.

[24] HR 3487; see also HR 6446, Military Pay Bill.

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sent on December 1, 1941, and later the Senate likewise approved it without a roll-call vote. Little was said about the bill in either chamber until the newspapers spread the story throughout the country that Congressmen had pensioned themselves.[25] Both houses then prepared to repeal the clause. Even though several repeal bills were introduced, and some reported, the repeal was actually accomplished by attaching a rider to HR 6446, the Military Pay Bill.

Also of interest was the action on part of the Senate to provide funds in the Legislative Appropriation Bill (HR 6802) for Senators with which to hire legislative experts. The step was in keeping with many assertions that legislators need counsel "to combat administrative superiority." The provision, however, was eliminated with a tacit understanding that something would be done in the Seventy-eighth Congress.

Of particular interest is the history of the renegotiation-of-contracts clause because of the part this legislation has played in the war program. In pursuance of the mandate, each of the war agencies having to do with construction (Army, Navy, Maritime Commission, and Treasury), has set up a price adjustment board and established procedures to renegotiate all contracts to eliminate excessive profits. The legislation was first written into law as a rider to the 6th Supplemental Appropriation Bill for 1942,[26] and later rewritten in its present form into the 1942 Tax Bill.[27]

Other major legislation approved by Congress during the session, but on which procedure was merely routine (except where otherwise pointed out) include the 1942 Tax Bill, the Second War Powers Act, small business legislation, price control and other anti-inflationary measures, Florida Pipe Line and Barge Canal, civilian war relief, drafting of eighteen- and nineteen-year-old youths, and declaration of war upon Roumania, Bulgaria, and Hungary.

Investigating Committees. Investigating committees of the House and Senate deserve mention. Several were very active throughout the year, rendering important services. The Senate had seven such committees[28] and the House nine.[29]

[25] The bill merely made Congressmen eligible for retirement pensions as are civil service employees. [26] HR 6868, P.L. 528. [27] HR 7378, P.L. 753.

[28] Truman Committee (SRes. 71), Byrd Committee on Non-Essential Activities (1941 Revenue Act), Murray Small Business Committee (SRes. 298 of the 76th Congress), Development of Mineral Resources (SRes. 53), Gasoline and Petroleum Shortage Problem (SRes. 156), Wool Committee (SRes. 276),and Special Silver Committee (SRes. 261).

[29] National Defense Investigation by Military Affairs Committee and the Naval Affairs Committee (HRes. 162), National Defense Program Investigation by Merchant Marine and Fisheries (HRes. 281), Air Accidents (HRes. 125), Patman Small Business Group (HRes. 294), Tolan Committee on Defense Migration (HRes. 113 of the 76th Congress, and HRes. 16), Petroleum Industry (HRes. 188), Dies Committee (HRes. 26 of the 76th Congress), and Phosphate Supply Investigation (Pub. Res. 68 of the 76th Congress.).

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The Truman Committee was perhaps the most important in the Senate, and it was accredited with much constructive work in behalf of the defense program. Information on cartels revealed by it practically forced the Administration to take action to prohibit any such agreements from controlling the use of inventions, patents, or other rights which had been holding up the defense program. The Committee's activities brought much important information on artificial rubber. During the session, the group took some 1,400 pages of testimony on various phases of the defense program, making a report to the Senate containing 10 parts and totaling 432 printed pages.[30]

The House Air Accidents Committee was also very active, but testimony taken by it was not published. The committee, however, made 20 reports to the House, involving over 200 printed pages.[31]

The House Military Affairs and Naval Affairs Committees, working under special resolution authorizing investigation of the national defense program, made a dozen or more reports to the House, primarily urging curtailment of exorbitant profits; and perhaps their findings constitute one of the main factors leading to the renegotiation-of-contracts clause found in the 6th Supplemental National Defense Appropriations Bill and later in the 1942 tax law.[32]

The National Defense Migration Committee met rather irregularly throughout the session to take testimony, and it made nine reports to the House, besides taking hundreds of pages of testimony.[33]

Both the House and Senate small business committees were active, taking thousands of pages of testimony, as well as making reports to their respective bodies recommending the enactment of legislation. Consequently, some small business legislation was written into law.

The Senate as a Council. The Senate received 12,859 nominations, of which 12,783 were confirmed, two rejected, 25 withdrawn, and 38 left unconfirmed. This was the third highest number of nominations disposed of by the Senate in any one session. Only 27 of the 12,859 were refused confirmation. Most of the nominations were disposed of after routine fashion; in fact, very few were opposed by many Senators. The most contested nomination was that of Judge Meaney—opposed by many Senators on the ground that Meaney did not merit a federal judgeship. Senator Norris put up his most vigorous fight of the year opposing this nomination; but it was finally approved on June 2, after prolonged hearings, by a vote of 39 to 20.[34]

[30] See Sen. Rep. 480, Parts 5–14 incl.

[31] See House Reps. 933, 1266, 1319, 1338, 1381, 1543, 1575, 1588, 1592, 1741, 1827, 2058, 2059, 2297, 2298, 2323, 2383, 2533, 2615, and 2740.

[32] House Reps. 982, 1634, 1735, 1767, 1873, 2031, 2081, 2148, 2246, 2272, 2371, 2515, and 2588. [33] House Reps. 369, 1286, 1553, 1879, 1911, 2124, 2396, and 2589.

[34] For complete details on nominations, see *Civilian Nominations*, prepared by Lewis Bailey, executive clerk of the Senate.

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The Senate was called upon to dispose of only four treaties during the session, not one of which was particularly controversial; and the procedure was merely routine.

The President's Relations with Congress. The relations between President Roosevelt and Congress varied in many instances from those of all prior years. In the case of "strict war measures," the President continued to request what was wanted and got it; in the case of non-controversial measures, the results were practically the same; but on many other counts there was an estranged feeling between the two arms of government. Certain proposals urged by the President were totally ignored. Congressmen had begun to feel the support of public opinion in opposition to the way things were being done in Washington, as was later expressed at the general election in November. For the first time, Representatives and Senators became deliberate in their fight against Administrative requests. The President still enjoyed the prestige of mapping out the general legislative program, but he suffered some outstanding defeats.

According to Congressmen, administrative officials have reached the brazen stage of raising the question of who knows the intent of the law: Congress or the Administration. Many Congressmen consider that the Administration acts according to what it thinks a given law ought to be, without being too much concerned about what the intent of Congress was in enacting the measure. Typical of this sentiment is the following statement by Congressman Tarver: "I do not understand people who have insisted upon carrying on this project, despite the express will of Congress, in as nearly the original form as they thought they could do and get by with it."[35]

The power of the Administration over Congress was discussed a number of times in both the House and Senate by members of both parties. Many members expressed resentment of this authority. Representative Gifford, member of the Committee on Executive Expenditures, in discussing the curtailment of expenditures on one occasion, perhaps uttered the most bitter remarks:

"Only the President can force action from this majority. When we demand an investigation of anything, a letter is sent to the department involved, and the reply comes back, 'Everything is all right.' Then you get up the next day and move that our request be laid on the table. The futility of it all! But let us continue our protests. It is our clear duty."[36]

Senator Tobey, referring to the Administration's technique, stated:

"Speaking of lobbyists, I should like to point out to the Senator that they come not only from farm organizations, but from other sources as

[35] Hearings on the Agriculture Department Appropriations Bill before the House Appropriations Committee, HR 6709, p. 384.

[36] *C.R.*, 77-2, p. 772, Feb. 3, 1942.

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well. As a member of the House for 6 years prior to coming to this body, I distinctly recall when a certain 'lame duck' Representative from Ohio was appointed by the Executive at $10,000 a year. His chief function was to cajole, importune, and threaten members of the House to 'come across' and meet the demands of the Administration. As compared to the methods used then, the methods of farm leaders pale into insignificance."[37]

Some events of the year may be cited to characterize the negative relationship between Congress and the President. One of the most outstanding administrative refusals by Congress was in the case of the war displacements benefits. The President sent a message to Congress on January 19, 1942,[38] requesting $300,000,000 for extended unemployment compensation benefits, with proposed legislation attached. The matter was referred to the Ways and Means Committee. Hearings were held for a number of days, and on February 19 the committee ordered the bill tabled, in effect killed.[39] Members of the Ways and Means Committee expressed conviction that it was not unemployment benefits that the President was trying to acquire, rather that he was seeking to take control over the Social Security program out of the hands of the states and centralize it in Washington. The President, however, was not daunted by this first defeat, and on March 4 he sent a supplemental estimate totaling $100,000,000, for the Federal Works Agency, to be used for war displacement insurance. This money was to be disbursed by the WPA under a rehabilitation program for unemployed and people with certain jobs until they could be transferred from regular industry to wartime industry. Again, the Appropriations Committee held hearings, and in executive session, voted that the estimate be tabled.

On January 14, the President sent a special message to Congress requesting that body to rid itself of trivial matters. After citing information on how much time Congress usually devotes to private bills and minor legislative measures, the President proposed that Congress authorize some Administrative arm to handle all minor issues for Congress, making an occasional report on what it did. To quote: "The passage of such legislation would be of real assistance to the Congress and to the President at a time when matters of grave national importance demand an ever-increasing share of our attention. It would also make available a means of dispensing justice simply and effectively to tort claimants against the Government and give them the same right to a day in court which claimants now enjoy in fields such as breach of contract, patent infringement, or admiralty claims."[40] On July 29, the War Department submitted a communication in pursuance of the President's message requesting that Congress enact legislation to authorize that Department to approve or dis-

[37] *C.R.*, 77-2, p. 7721, Sept. 25, 1942. [38] House Doc. 589.
[39] See HR 6559. [40] See p. 2 of House Doc. 562.

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approve the "construction and maintenance of bridges over navigable waters in accordance with such general policy as may be prescribed by the Congress."[41] This would eliminate the work of Congress in enacting legislation to authorize the building of each bridge. Congress, however, never even considered these proposals.

On February 19, the President took another rebuff when one of the Administrative proposals on employment stabilization (HR 5638) was voted down by 104 to 252.[42] Representative Beiter said: "This bill was introduced at the instance of the President of the United States, who made recommendations in two of his messages to the first session of this Congress."[43]

On November 2, the President submitted to Congress a message requesting legislation empowering him to suspend for the duration of the emergency the operation of laws restricting free movement of persons, property, and information in and out of the United States. The Chief Executive stated that, although many obstacles had been removed, numerous restrictions still existed which impeded the war effort. This matter was referred to the Ways and Means Committee, and hearings were held.[44] The committee, nevertheless, could not agree with the President as to the necessity of such power, nor did it think that the existing laws impeded the war effort. In fact, the members felt that it involved a delegation of too much financial power to the President. The proposal died in committee.

On another occasion, the President wrote a letter to the Vice President of the United States opposing pending legislation. He stated: "I believe that irreparable damage to the war effort and to the farmers of the country would result from the enactment of this legislation."[45] The Senate, however, ignored the President's recommendation and passed the bill by a vote of 50 to 23. Senator Gillette stated: "I was very much disturbed and somewhat agitated by the reading of the letter from the Chief Executive addressed to the Vice President, in opposition to the passage of this measure . . . . I desire to say that this is a very unusual procedure in legislation, so far as my knowledge goes. The Chief Executive of the United States has a function with reference to legislation, and a duty which is laid upon him by the Constitution of the United States . . . . I question that it is proper procedure for the President of the United

[41] A proposed bill (four typewritten pages) was attached to this communication and signed by Henry L. Stimson.

[42] Mrs. Norton, chairman of the Labor Committee handling the bill, stated that the following agencies recommended the bill: "the Department of Agriculture; the Department of Labor; the Federal Works Agency; the War Department, which endorsed it most heartily; and the Bureau of the Budget, and I think you will all agree with me that the Bureau of the Budget scans a bill pretty closely before it endorses it." *C.R.*, 77-2, p. 1488. [43] *C.R.*, 77-2, p. 1483. [44] HR 7762.

[45] *C.R.*, 77-2, p. 1646; see also S 2255 and HR 6564.

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States, when a measure is pending before the Senate of the United States, not to send a message to the Congress, but to send a letter to the presiding officer of the Senate, the Vice President of the United States, to be laid before the Senate, to influence our action in a matter which is before us."[46] The bill was never passed by the House.

Another point of interest on the relations between Congress and the President includes the action on the 1942 Tax Bill. In the first instance, the Ways and Means Committee approved by 13 to 10 inclusion of a provision in the bill providing for joint mandatory returns. The Chief Executive held a conference with Chairman Doughton, of Ways and Means, and later in the same day the committee reconsidered the joint returns provision and struck it from the bill.[47] The committee rejected outright one Administrative proposal in the tax measure, however, when it refused to place a tax on state and local government security issues.

In the case of HR 6292, to amend the Alien Registration Act, the bill was submitted to Congress by Lawrence M. Smith for the Department of Justice, as an Administrative proposal. Not only was Mr. Smith the author, but with the "proper coöperation" he brought Administrative pressure to get the bill enacted; and he was successful. The committee, according to the clerk of the Senate committee, raised the question when the bill was pending whether any such bill was needed at the time, in the light of the fact that the United States was at war. The committee was assured that the Administration wanted the measure and that it was necessary. The bill accordingly was passed, having taken much of House and Senate Committee time; but it was vetoed by the President.[48] Nothing further was done about the matter.

The most sensational message of the year recommended the passage of legislation "placing a floor under prices of farm products."[49] It was submitted to Congress on September 7. It read, in part: "I ask the Congress to take this action by the first of October. Inaction on your part by that date will leave me with an inescapable responsibility to the people of this country to see to it that the war effort is no longer imperiled by a threat of economic chaos. In the event that the Congress should fail to act, and act adequately, I shall accept the responsibility, and I will act."[50] This message was severely criticized in both houses by both Democrats and Republicans; but the President got his legislation on October 2.[51]

In all, the President vetoed 46 bills, and not one was passed over his veto; nor was a single veto message considered with repassage in view.

[46] See pp. 1647–1648 of *C.R.* 77-2.

[47] In 1941, the Ways and Means Committee included a mandatory joint returns provision in its tax bill and the President sent a letter to Chairman Doughton requesting its elimination. The committee did not oblige him, but an amendment adopted by the House later eliminated the item.

[48] House Doc. 611.

[49] House Doc. 834.

[50] House Doc. 834.

[51] House Doc. 716.

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GOVERNMENT OF "RURBAN" AREAS

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Michigan has a metropolitan problem, but by no means confined to the one area of Detroit, commonly thought of as Michigan's only metropolitan region. Other Michigan cities also have "growing pains" as their populations sprawl beyond their formal boundaries. The Motor City continues to suffer from this ailment, but the disease has taken a new form. Not only are the urbanites moving to the suburbs, but the suburbanites are moving to the rural sections. In the smaller cities, the ever-widening circle of dispersion has been straightway from the core city to the unincorporated township. Here the migrating urbanites have not first formed incorporated suburbs, but have established themselves as that new specie, "rurbanites," at once dependent on the unincorporated township for governmental services.

The 1940 census indicates that Michigan cities are losing population, but that considerable growth is going on beyond their city limits. Second-class cities in Michigan display what is undoubtedly happening to corresponding cities in other states as well. While this state has in Detroit one of the much-studied and publicized metropolitan regions, it has forty-two cities with between 10,000 and 175,000 people. Notwithstanding a state-wide population gain of 8.3 per cent in the last decade, 30 per cent of the state's cities of 10,000 or more lost inhabitants, whereas only four counties out of eighty-three showed a decrease. It is significant, however, that the counties which underwent the most rapid growth were those with large urban centers. For example, Genesee county gained 7.5 per cent, whereas it county seat, Flint, which is also the third largest city in the state, lost two per cent. Jackson county showed an increase of nearly one per cent, while the city of the same name lost 11 per cent.

The disproportionate growth of the counties over the cities located within them is illustrated in the table on the following page.

The picture created by these census figures might at first give the impression of a decided rural trend in Michigan. Actually, the growth in the county population, when put in its proper perspective, will be seen to have taken place chiefly in the immediate vicinity of the cities, and constituting a continued growth of the cities. This phenomenon can be observed most clearly by noting the increase in population in the rural townships surrounding the municipalities. While the latest federal census records that the city of Flint lost two per cent of its people, five townships in its immediate neighborhood increased their numbers by from 38 to 66 per cent. In 1930, these five townships had a total population of 25,395, whereas in 1940 it totaled 38,000. Wyoming township, adjacent to Grand

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POPULATION INCREASE IN MICHIGAN COUNTIES AND CITIES FROM 1930 TO 1940

Area	*Population in 1940*	*Population in 1930*	*Per Cent Increase*
Bay County	74,981	69,474	8
Bay City	47,956	47,355	1
Berrien County	89,117	81,066	10
St. Joseph	8,963	8,349	
Benton Harbor	16,668	15,434	3
Niles	11,328	11,326	
Calhoun County	94,206	87,043	8
Battle Creek	43,453	43,573	− 0.2
Genessee County	227,944	211,641	7.5
Flint	151,543	156,492	− 2
Ingham County	130,616	116,587	11
Lansing	78,753	78,397	0.5
Jackson County	93,108	92,304	0.8
Jackson	49,656	55,187	−11
Kalamazoo County	100,085	91,368	9+
Kalamazoo City	54,097	54,786	− 1
Kent County	246,338	240,511	3
Grand Rapids	164,292	168,592	− 2
Macomb County	107,638	77,146	40
Mt. Clemens	14,389	13,497	6
Muskegon County	94,501	84,630	6
Muskegon	47,697	41,390	10[a]
Muskegon Heights	16,047	15,584	
Oakland County	254,068	211,251	20
Pontiac	66,626	64,928	
Ferndale	22,523	20,855	4
Royal Oak	25,087	22,904	
Saginaw County	130,468	120,717	8
Saginaw	82,794	80,715	0.2
St. Clair County	76,222	67,563	12
Port Huron	32,759	31,361	4
Washtenaw County	80,810	65,530	23
Ann Arbor	29,815	26,944	13
Ypsilanti	12,121	10,143	
Wayne County	2,015,623	1,888,946	6
Detroit	1,623,452	1,568,662	3

[a] The decided increase in Muskegon was due to the annexation of territory.

Rapids, numbers 20,396 people; Kalamazoo township, contiguous to the city of the same name, has a population of 16,827. Warren township on the fringe of the Detroit metropolitan area has grown to an estimated 45,000. There are forty-six townships in Michigan which have more than 5,000 inhabitants, not counting the incorporated cities and villages within them.

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The density of population in these townships meets the legal requirements for incorporation. Formerly, when the inhabitants moved outward from a metropolis, they established small suburban cities; this metropolitan history would indicate that such an agglomeration of people as now exists in the townships would incorporate to furnish municipal facilities necessary for convenient urban life. Notwithstanding this precedent, new suburban governments have not resulted from the most recent movement of people in the crowded areas.

The fact that these settled townships have not incorporated is explained in part by one of the reasons for people moving into the township: lower taxes. In 1933, Michigan adopted a fifteen-mill property tax rate limitation. The supreme court held it not to be operative in incorporated cities and villages unless they voted themselves within the limitation.[1] Only eleven cities have taken this action. In 1939, the tax rate in Michigan cities averaged slightly less than two mills below the 1933 rate.[2] During the same period a decided drop in the tax rate in the townships enticed both residential and industrial development from the cities to unincorporated areas in the same vicinity. Kalamazoo, one city in which the voters rejected the tax limitation, now finds the equivalent of 35 per cent of its population and 35 per cent of its assessed valuation located in the adjoining townships.

Expanding industry has also moved out of the cities to the neighboring green pastures in recent years. There are now approximately fifty bustling war plants within forty of the most populous townships. Some of the plants were simply converted to war production, while a number of others were erected in rapid order by the Defense Plant Corporation. The magnitude of the larger war factories and the desire to minimize the effect of possible bombing dictated their location outside built-up cities. The Willow Run Bomber Plant and the Hudson Naval Arsenal were established in essentially rural areas because of these considerations. The tendency of the plants to relocate beyond the crowded confines of the cities has induced workers, because either of convenience or of present necessity, to move to the immediate vicinity of their work. This secondary effect of plant location, namely, the mushrooming of substandard dwellings and trailer camps near-by, may involve a long run social cost far greater than the direct economic advantage to the entrepreneur. This social cost must be calculated in terms of delinquency and crime waves. The total economic cost must take into account the added dollars for extension of sewers, water-mains, hard-surfaced streets, and other community facilities. Ad-

[1] School District of City of Pontiac v. City of Pontiac, 262 Mich. 338 (1933).

[2] Robert S. Ford and Albert Waxman, *Financing Government in Michigan*, 74–75. Between the adoption of the amendment and 1939, the average state tax rate fell 5.45 mills.

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mittedly, the location within cities of new industrial development and the population which accompanies it entails added expense, too; but exhaustive investigations made by the Department of City Planning of the city of New York indicate that the cost of civic improvement per person benefited ranged from $95 for rebuilding a centrally situated community on a master block basis to $586 for providing comparable municipal facilities for a new single-family development located on unimproved land.[3] Furthermore, when new services are extended by the municipality to outlying areas, existing facilities within the central city fall into partial disuse. Newcomers are no longer available to take the place of those who vacated the city, but the existing facilities cannot be abandoned because of some remaining population.

In commenting on the Jerry-built developments outside of Flint, an observer revealed another reason for the movement to the rural areas: lower land values. "It was the relative cheapness of land and the aspiration to do a bit of small-scale, amateur farming—more especially the desire to keep pigs and/or chickens. Moreover, the lower tax rate was a big talking point of the 'realtors' in selling."[4] People who were not able to own property in the city because of high real estate values have seen the possibilities of moving to the outskirts and becoming the proud owners of homes and at the same time adding to their larders from garden plots.

The paucity of building codes and zoning restrictions in the townships undoubtedly contributed further to the development of marginal housing in the peripheral areas of cities. Conversely, the failure of the municipalities both to plan *adequately* and to enforce zoning *strictly* within their limits has forced a different group, the well-to-do, to move into the countryside where their acreage will protect them from their neighbors.

Lastly, the farm-to-city movement in the first three decades of this century populated Michigan cities with many unregenerated farmers who have lately seized the opportunity offered by improved transportation again to take up a semi-rural life. Although this reason for the township migration was a motivating factor in all income groups, the country homes and the gentlemen's estates were not intermingled with the subsistence farms and garage-house developments.

Better government in the suburbs in contrast to that of the core cities accounted in part for the earlier exodus from the large metropolitan cen-

[3] R. G. Tugwell, "The Real Estate Dilemma," *Public Administration Review*, Vol. 2, pp. 24–30 (Winter, 1942).

[4] Letter from Carroll Clark, November 1, 1942. It is interesting to note that the tax rate was still a consideration in Flint even though the city had voted itself under the mill tax limitation. Any part of the tax levy which is made for service on debt incurred prior to the effective date of the tax limitation is not subject to the fifteen-mill limitation. About 18 per cent of the present property tax levy is used to pay principal and interest on this "old" debt.

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ters, but it certainly plays no part in this movement to the townships. Of the 21 Michigan cities most immediately affected by township migration, 13 are operating under council manager governments. The cities of Kalamazoo, and more recently Port Huron and Saginaw, have won wide reputation for good government. The townships in Michigan, on the other hand, have been characterized by one authority as "political curiosities" that do not return a "commensurate value in services for revenue retained."[5] The township's lack of municipal facilities which are usually considered necessary for urban living affects the rurbanites differently according to the type of governmental services to which they were accustomed. It has been observed that "many of these people are not thinking in terms of a comparison with living standards which they might achieve [in the city], but rather in comparison with those prevailing in the definitely substandard areas from which they came—Kentucky, Missouri, and Arkansas." On the other hand, some settlers are somewhat dismayed when, upon contacting the township supervisor, they discover that there is no provision for garbage collection in their Shangri-la.

In one metropolitan township, Warren, the population increased in a few months from 20,000 to 45,000. The newcomers were drawn largely by two new defense plants in the area, the Chrysler Tank Arsenal and the Hudson Naval Arsenal, employing 18,000 and 8,000, respectively. The *Detroit Times* described conditions: "We saw enough dormant disease to endanger the health of the entire city of Detroit within a week." Large amounts of sewage are dumped into creeks untreated, some homes have septic tanks while others, about 65 per cent, have outhouses. The supervisor estimated that 100 miles of sewerage system would be needed to take care of the six-mile-square township. A second problem is roads. "Warren's main roads are good, all of them paved. But it is the side roads and streets that cause the trouble. They are dirt, and a rainy spell makes them impassable." A third problem is water supply. A good portion of the individual population have their own wells, others haul from their neighbors' wells, and an adequate water supply would require seventy miles of water mains. In this unincorporated township there was an unfulfilled need for every one of those governmental activities necessary to safe, convenient, and healthful living under crowded conditions.

To meet the demands for essential municipal services in the urbanized townships, the Michigan legislature has passed a series of enabling acts which make it possible for populous townships to regenerate themselves and perform functions usually undertaken only in municipalities. By Public Act 94 of 1933, townships in Michigan are authorized to acquire or construct housing facilities, garbage, rubbish, and sewage disposal plants, water supply systems, public markets, stadiums, auditoriums,

[5] A. W. Bromage, "Shall We Save the Township?", *Nat. Mun. Rev.*, Vol. 25, pp. 585–588 (Oct., 1936).

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hospitals, parks and recreational facilities, reforestation projects, and aëronautic and marine facilities. To finance any of these projects, the power is granted to issue revenue bonds. Fortunately, this method of financing was provided; for under the constitutional tax limitation mentioned above, it has become extremely difficult to finance capital outlays outside cities. The limitation of fifteen mills may be increased only "by a two-thirds vote of the electors," and then only for a period of five years and never to exceed a total of five per cent of the assessed valuation. The 1937 legislature empowered the townships to undertake the governmental functions of planning and zoning in addition to grading and surfacing streets for platted areas. When these new functions are added to earlier optional powers which enable the township to provide fire protection, contract for a water system, create a public recreation system, and furnish the citizens of the township with a band for their entertainment, it can be seen that the township seemed to be enjoying a renaissance. In the same decade when these laws were enacted, other traditional functions of the township in matters of health, highways, and welfare were transferred to the county, suggesting the possibility of shelving township government altogether. Future legislation can resolve this apparent paradox by recognizing the difference in interest between urban and rural townships and allowing the former to set up an organization capable of administering functions equivalent in many respects to those of a city.

The degree to which the new optional powers have been utilized by the urban townships is somewhat difficult to ascertain. The townships are exercising these new powers to the extent that a number of them have more than ten employees and two of them have budgets of over $100,000 a year. It has been estimated that there are somewhere between 200 and 300 fire departments, most of them volunteer, which are maintained by the townships, or in part by the townships along with incorporated villages and cities. In Royal Oak township, part of which area has recently been incorporated as the city of Hazel Park, there has existed for fifteen years a full-time township fire department serving ultimately a population of some 20,000 people. According to the director of the bureau of engineering of the state health department, there are 55 townships where water and sewer systems exist. A number of them have been built by real estate development companies, and probably do not operate under the township ordinance directly; but he states that "there are a great many systems, particularly in the metropolitan area about the city of Detroit, where advantage has been taken of the powers of the township to construct such systems. This is also true in the area around Pontiac and to some extent around Saginaw, Lansing, Grand Rapids, Battle Creek, and Kalamazoo."

Information furnished by the State Planning Commission indicates that 35 townships have zoned and 10 to 15 are now in the process of zoning. It seems that the chief interest in zoning has been the misguided one of

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providing some control over building, including construction. Where this is the interest, there seems to be rather alert enforcement of at least the building provisions. The planning authorities in the state complain that the zoning ordinances are not based upon adequate inventories, and that they cover only the specific problem of the group that sponsored the zoning movement.

From the administrative viewpoint, the township has long been criticized. Its indifferent performance in property assessment, the public health function, and law enforcement continues, while all road construction and public relief work have been transferred to the county out of necessity for improved administration. Reputation in the performance of their traditional functions predicts failure in the administration of these recent optional services. An amusing but tragic incident in which a shining new township fire truck was useless in a crisis because the battery needed charging demonstrates that efficient government demands professional municipal administration. Through constitutional and statutory provisions, the township is provided with rather an elaborate official personnel to facilitate its operation. A township supervisor, clerk, commissioner of highways, treasurer, and constables are elected annually, while not to exceed four justices of the peace are elected for four years. The supervisors, the township clerk, and the two justices of the peace whose terms will soonest expire constitute the township board, which is, by statute, the governing body of the township. There are additional statutory officers, and to these may be added numerous boards if optional services are undertaken. Administrative efficiency usually exists in inverse proportion to the number of administrative officials who are directly elected. Therefore, if chaos is to be averted in the performance of such diversified municipal functions as planning and sewage disposal by the township, provision must be made for a responsible, integrated executive. To avoid administrative difficulties in the "rurban areas," the legislature might wisely adopt another optional law providing for appointment by the township board of a township manager. This arrangement would be comparatively simple and would give the township all the benefits of an efficient system of management which the cities evolved only after many generations of hard experience.

Another solution to the problem of furnishing community facilities which would not in any way affect the traditional governmental framework should be considered. It appears to be a simple matter to negotiate for the purchase of services by a series of contracts between the unincorporated areas and the cities to which they are adjacent, and thus remove the township officers from any operating responsibility. This arrangement recommends itself particularly from the standpoint of economy, for the existing municipal services can be extended and enlarged much more thriftily than new and duplicating facilities can be constructed. Further-

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more, the township can never hope to attract the same quality of employee as the city to do the same type of work, for there are only slender opportunities for advancement in these limited units. In realization of these advantages in buying services, many contracts have been negotiated. Some half-dozen formal contracts for fire protection exist around the cities of Dearborn, Lansing, and Saginaw. Joint arrangements for furnishing water have been negotiated by at least 12 townships. However, there is a need for revision of the statutes to authorize direct negotiation of a contract between a municipality and contiguous township areas. Specifically, this authority has been questioned in connection with sewage treatment problems in the Battle Creek area. Another factor which complicates the apparent simplicity of this method of providing necessary services is that the township boards almost uniformly refuse to accept their just share of the cost. In Wyoming township, immediately south of Grand Rapids, which includes not only considerable residential areas but some manufacturing as well, a proposal for effective fire protection from the city was rejected and two volunteer fire departments organized. The ultimate cost of these departments will be greater than the Grand Rapids charge and much less effective.

Another real difficulty in the negotiation of contracts for services has been the failure to develop a yardstick by which to determine a fair service charge. Cities have been too yielding in these contract relationships. The municipal government is sometimes dominated by the attitude of the merchants that the city should cater to the trade area. In other instances, in performing services for these outlying areas the officials act out of municipal self-protection, thereby safeguarding the health and welfare of their community.

Annexation should be mentioned here, but not necessarily seriously considered. For all who are familiar with the metropolitan problem, annexation is recognized as an ideal but remote possibility. In these areas which have been discussed, there has been only one annexation in the last decade, and that accounts for the single exception to the general rule of the more rapid growth of counties than cities in Michigan. By annexation, the city of Muskegon increased its population by ten per cent, whereas the county of Muskegon increased by only six per cent and Muskegon township, which was the area immediately affected by the annexation, had a decrease of 40 per cent.

Whatever the solution, it must be recognized that the perplexities of the metropolitan problem which were thought to be confined to the very large cities have now come to officials and citizens alike of every middlesex, village, and town.[6]

[6] Acknowledgment is made to the Horace H. Rackham School of Graduate Studies for a grant which made this study possible.

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FOREIGN GOVERNMENT AND POLITICS

SOME RECENT BRITISH WHITE PAPERS[1]

W. HARDY WICKWAR
Rockford College

The Beveridge, Scott, and Uthwatt reports are all concerned with the widening framework of governmental action within which our free enterprise system operates. None of them is revolutionary. The Scott report has even been called reactionary. The Beveridge and Uthwatt reports are based on a generation of practical experience. In their attempt to infuse a few clear principles into future policy, these two great reports, in their different ways, point towards greater order and system, the smoothing away of anomalies, the filling in of gaps. Procedures which have served certain categories of people or certain localities, they attempt to make universally and equally available to all people or to all localities. They mark a decisive step in the passage from the fragmentariness that is inseparable from experiment to the universality that is characteristic of good government.

Sir William Beveridge's plan for social security is nothing less than an attempt to abolish want by redistributing income. He assumes that society has somehow to pay the cost of privation in any case, and therefore might as well do so consciously and deliberately through the instrumentality of government.

Sir William's thinking is governed by the "poverty line" technique practised by British social investigators and reformers. A "subsistence income" is calculated on the basis partly of scientifically determined nutritional minima and partly of statistically determined averages. Using this yardstick, social surveys have estimated that three-quarters of inter-war British want was caused by cessation of earnings and one-quarter by size of family. Two distinct causes of want therefore remain to be eliminated, if every family income is to be raised to a "national minimum," which Sir William reckons will be not less than 40s for every couple and 8s for every child at the end of this war.

For income-maintenance, he approves of social insurance, and recommends its extension to cover practically the whole population. He advocates the expansion of the present contributory system, and rejects the

[1] William H. Beveridge, *Social Insurance and Allied Services: Report* (New York: The Macmillan Company. 1942. Pp. 300. $1.00.)

Ministry of Works and Planning, *Report of the Committee on Land Utilization in Rural Areas* (New York: British Information Service. 1942. Pp. vi, 138. $0.50.)

Ministry of Works and Planning, *Expert Committee on Compensation and Betterment: Final Report* (New York: British Information Service. 1942. Pp. vi, 180. $0.65.)

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wholly tax-supported plan preferred by British socialists, partly because insurance is increasingly popular in Britain as an automatic substitute for inquisitorial means tests, and partly because citizens "should not be taught to regard the state as the dispenser of gifts for which no one needs to pay" (p. 108). And, since his aim is "adequacy," he proposes to preserve and extend the system of flat-rate premiums and flat-rate benefits which already distinguishes the British system of social insurance from all other systems in all other countries. The great advance that is here advocated by Sir William Beveridge is the pooling of unemployment insurance, national health insurance, and workmen's compensation in one big Social Insurance Fund, which would pay the same minimum rate of subsistence benefit in unemployment, disability, re-training, retirement, and guardianship of orphans, besides paying lump-sum benefits adequate to cover such vital expenses as birth, marriage, and burial.

In all the older social insurance systems, the relation between public and private, compulsory and voluntary, has an importance unknown in the American system. Following along lines already marked out in previous reports, Sir William suggests that British compulsory insurance should henceforward be effected by the state itself, instead of being delegated to 6,000 "approved societies," if equal premiums are to yield equal benefits. He proposes, however, to allow trade unions, friendly societies, and organized industries to pay out benefits on behalf of the state in all cases where they are willing to supplement the subsistence rates with additional premiums and benefits, statutory insurance for a bare minimum being thus used as an incentive to voluntary insurance for more than that minimum. Industrial insurance he proposes to unify under a government-owned corporation, in order that 37 per cent of industrial insurance premiums shall not continue to be wasted on salesmanship and other administrative expenses. And he suggests joint management-labor boards in hazardous industries, to collect an additional premium and reduce the risk of industrial disability.

Compulsory insurance is not envisaged as a complete cure for want, except in so far as that want arises from cessation of earning. When it arises from inadequacy of income in proportion to size of family, the remedy proposed is not social insurance, but children's allowances paid wholly out of taxes.

As social insurance and children's allowances expand in scope and adequacy, the need for public assistance, conditional on a means test, is bound to decline. Under the Beveridge plan, this diminishing residuum of the uninsured and under-insured ought to be guarded from want by National Assistance. Local domiciliary poor relief would thus be abolished for good and all.

All of these services—compulsory social insurance, encouragement of

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voluntary mutual insurance, children's allowances, and national assistance—would come under a Ministry of Social Security. For expert research and advice, this would need a departmental planning staff, modelled on the Unemployment Insurance Statutory Committee which has rendered invaluable service with Sir William himself as chairman.

The report recognizes frankly that social security is only part of general social policy. In harmony with the British Medical Association's plan for socialized medicine, it therefore assumes the establishment also of a free public health and rehabilitation service for all, financed partly from the Social Insurance Fund in order to make people feel that they have covenanted for a right to early treatment.

It assumes an attack on unemployment that will keep the average rate down to the low figure of 8½ per cent, which will obviously be possible for Britain only if the nations adopt a world policy favorable to international commerce. And it assumes that regional differences in house-rent will be mitigated by new housing and some dispersal of industry.

The work of one of the world's first and foremost authorities on unemployment, this report, by its clarity, its logic, and its urbanity, has at once taken its place with Nassau Senior's report on the *Poor Laws* (1834) and the Webbs' minority report on the *Poor Laws and the Relief of Distress* (1909), among the greatest of British parliamentary papers. It is signed by Sir William Beveridge alone. His eleven associates were all permanent officials, and were therefore exempted from any obligation publicly to express their views. This, as their chairman said, made them even more useful in private.

It was by Arthur Greenwood, then minister without portfolio and chairman of the cabinet committee on reconstruction problems, that this interdepartmental committee was appointed, in 1941, "to undertake, with special reference to the inter-relation of the schemes, a survey of the existing national schemes of social insurance and allied services, including workmen's compensation, and to make recommendations." At the same time, Lord Reith, who transformed the Ministry of Works and Buildings into a Ministry of Works and Planning, appointed the Scott and Uthwatt committees on post-war land-use.

The biggest practical difficulty in the way of Beveridge's nation-wide subsistence minimum is the gigantic deviation of London and agricultural rents from the national average. Can the rise of London land-values be stopped? Can the agricultural worker's spending power be raised to an urban level? The national minimum must give way to regional and occupational minima, unless physical planning keeps pace with social planning. The fate of the Beveridge plan is thus linked closely with the fate of these other plans.

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The two 1942 reports on land-use planning were called forth by certain aspects of the 1937 report of the Barlow royal commission on the *Distribution of Population*. That blue book recommended the dispersal of industry; these white papers consider where and how industry ought to be dispersed. They are thus part of the general discussion that precedes the elevation of land-use planning from the local to the national plane. They are significant because they testify to the steady growth of a body of informed opinion favorable to nation-wide planning and interested in its practical details.

The departmental committee on *Land Utilization in Rural Areas* was composed of twelve non-official men and women. They split into a majority of eleven and a minority of one. The majority included an ex-governor general, a geographer, and the chairman, Lord Justice Scott, who as Leslie Scott presided over an important Ministry of Reconstruction committee on *Compensation for Compulsory Acquisition* at the close of the first World War. The minority consisted of Professor S. R. Dennison.

Their confused and confusing terms of reference were: "To consider the conditions which should govern building and other constructional development in country areas consistently with the maintenance of agriculture, and in particular the factors affecting the location of industry, having regard to economic operation, part-time and seasonal employment, the well-being of rural communities, and the preservation of rural amenities."

The majority are opposed to any dispersal of industry into the countryside until a five-year plan of constructional development shall have been carried out, with the well-being of rural communities and the preservation of rural amenities in mind. The constructional development that they recommend is therefore the rehousing of as many farm-laborers as possible off the farm and in the village, thus restoring the nucleated village community to the place which it held before the inclosure movement of the eighteenth century. Only in the nucleated village can the agricultural wage-earner and his family be economically provided with modern utilities or social services, and his opportunities of social living and material comfort be raised to a near-urban level.

If this Scott report were put into effect, it would give a new turn to England's old tradition of a gardened landscape, about which it lyricizes lengthily. It would call a halt to the lateral expansion of London, and to pepper-box and ribbon development everywhere. It would check the throwing off of satellite towns. It would leave new mobile light industries with practically nowhere to go except the former depressed areas of the North and West. It assumes that the long-term tendency towards agricultural specialization can and should be stopped. In contradiction to the Beveridge report and to Professor Dennison's vigorous dissenting report,

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it thus assumes the continuance of a siege economy after the war, although in that case it is hard to see how its proposals can be financed. It shows what planning means to England's rural romanticists.

To this somewhat amateurish Scott committee, one of the purposes of a National Planning Authority would be to prevent constructional development over most of the countryside. To the expert Uthwatt committee, the problem is to find a new technique for compensating land-owners if their hopes of rising land values are disappointed by the adoption of this or any other policy of nationally-planned land-utilization.

This departmental committee on *Compensation and Betterment* was composed of eminent barristers and chartered surveyors, presided over by Mr. Justice Uthwatt. In addition to recommending ways of preventing speculation in war-damaged property, it was asked, "To make an objective analysis of the subject of the payment of compensation and recovery of betterment in respect of public control of the use of land."

In its masterly analysis of jural principles and administrative practices, this committee showed how in England a confusion has arisen between what in the United States are called the police power and the power of eminent domain. Under the latter, known in England as compulsory acquisition, compensation is rightly paid. But under the former, as for instance in a planning scheme, is any one morally entitled to compensation for obeying the law? Such compensation is not only ethically questionable, but also financially inconvenient; for every landowner who fears he will lose by a planning scheme is likely to demand immediate compensation, even though "floating value" can come to rest on only a few of their many properties; and planning agencies have therefore been reluctant to sterilize agricultural land against constructional development. The attempt to finance "compensation for injurious affection" by "recovery for betterment" has proved ineffective, since it is practically impossible to prove to the satisfaction of a court that the rise in the value of a certain property is due simply and solely to planning.

For this fiscal and psychological impasse, the Uthwatt committee has proposed some heroic remedies. The first is that on all undeveloped land the property rights should be divorced from the development rights. The former would be left with the private owners: the latter would be bought in one big lump by the state, and a general compensation fund divided among the owners by expert valuers. Thenceforward no one would be able to develop undeveloped land, unless the state compulsorily acquired the owner's interest, remarrying it to the development rights, and then leased it under restrictive covenant to the developer for a term of years.

The second big set of proposals made by the Uthwatt committee concern the replanning of land that is already developed, but is in need of redevelopment. Here it is proposed that a planning agency should be given

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power of eminent domain, not only when land is needed for immediate public use, but also to expedite planned redevelopment, both in war-damaged and in other reconstruction areas.

The net result of these proposals would be that in the course of time a constantly increasing proportion of developed land would be owned by central or local planning authorities, by whom it would be leased to developers. Public control would therefore change in character: control through police power would be increasingly reinforced by control through ownership.

For any developed land remaining outside the expanding scope of public ownership, it is proposed that the Lloyd George-Snowden attempts to tax unearned increment be revived, this time as a substitute for betterment.

The constitution of the future Central Planning Authority is discussed in remarkably similar terms by both the Uthwatt and Scott committees. As the Scott committee says, "A national plan must be a continuous and flexible application of government policy" (p. 85). A minister of planning or of national development is therefore envisaged as chairman of a committee of the cabinet, by whom alone, under the British system, a decision on policy can be made. To set him free for this all-important policy-making work, both committees propose to exempt him from departmental duties by the startling proposal to delegate responsibility for actual administration of the national plan to a commission. The best reason for this recommendation, which has since been rejected by the government, seems to be the success of the War Damage Commission, which has similarly relieved the Chancellor of the Exchequer of some departmental duties.

In all these British white papers of 1942, the same trend is in evidence. In the midst of total war, and either because of it or in spite of it, they are contributions to one aspect or another of the long-range planning of national policy.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Dr. William C. Beyer, director of the Philadelphia Bureau of Municipal Research, has been appointed lecturer in political science at the University of Pennsylvania and is conducting a course on personnel administration.

Associate Professor James C. Charlesworth, at the University of Pennsylvania, has been commissioned as a Major in the U. S. Army. He is attached to the Personnel Division of the Adjutant General's Office.

Professor Charles M. Kneier, of the University of Illinois, has been commissioned in the U. S. Army with the rank of Major, and has entered the School of Military Government at Charlottesville, Virginia.

Professor A. N. Christensen, of the University of Minnesota, has been granted leave of absence to serve as a public relations officer in Argentina for the U. S. Department of State.

Professor Lennox A. Mills, of the University of Minnesota, is now summarizing and interpreting world news three times a week over Station WCCO, Minneapolis.

Professor Benjamin H. Williams, of the University of Pittsburgh, has taken a civilian position with the Geopolitical Section of the Military Intelligence Service of the War Department General Staff. He is stationed in Washington.

Mr. O. W. Wilson, professor of police administration in the department of political science at the University of California, has been granted leave of absence for the duration, and has been assigned to the School of Military Government, Charlottesville, Virginia, with the rank of Lieutenant Colonel, U. S. Army.

Professor Harvey Walker, assistant secretary-treasurer of the American Political Science Association, has been promoted to the rank of Lieutenant Colonel, with assignment as Finance Officer, Services of Supply, Headquarters U. S. Army Forces, South Atlantic.

On March 24, the eighth annual lecture at the University of Illinois in the Edmund J. James Lectures on Government was delivered by President Clarence A. Dykstra of the University of Wisconsin, on the subject, "Democracy and the Manpower Crisis."

Dr. Julius F. Prufer, formerly associate professor of political science at Roanoke College, is now serving as a Lieutenant in the Solomons Branch, giving instruction in naval administration and international law.

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Professors Charles M. Kneier of the University of Illinois, Arthur W. Bromage of the University of Michigan, James Q. Dealey of Hamilton College, Walden Moore of the University of Rochester, and R. W. Van Wagenen of Yale University have been commissioned officers in the U. S. Army and are now enrolled in the School for Military Government at Charlottesville, Virginia.

After a year in Central America completing research for an analysis of Honduran political institutions, Dr. William S. Stokes resumed teaching at the University of California at Los Angeles last October. His work was financed by the Del Amo Travelling Fellowship of the University of California and a travel grant from the U. S. Department of State.

Lectures in a ten-year series at the University of Omaha, supported by a bequest from Mrs. William F. Baxter, were delivered in early March by Mr. Beardsley Ruml on "Government and Business" and "Government and Values."

After serving since October as acting director, Professor Leland M. Goodrich, of Brown University, was, on February 13, elected director of the World Peace Foundation for the current calendar year.

On the basis of a post-card poll, the managerial committee of the Midwest Conference of Political Scientists decided in March that a 1943 conference is not feasible.

Dr. Richard C. Snyder, formerly instructor at the American University, has received an appointment as lecturer in government at Columbia University.

Dr. Victor Jones, assistant professor of political science at the University of California, has accepted a part-time appointment with the San Francisco office of the War Labor Board, but continues a full teaching program at the University.

Professor Oliver E. Benson, of the University of Oklahoma, for several months with the Office of War Information in Washington, is now in training at the University of Colorado for naval intelligence service.

Professor Royden J. Dangerfield is now on leave from the University of Oklahoma and is with the Board of Economic Warfare in Washington. Professor Joseph C. Pray has been commissioned Lieutenant, junior grade, in the Navy and is now in active service.

Two members of the department of political science at the University of Pennsylvania, Professors B. W. West and E. B. Cale, are teaching in the Naval Pre-Flight School at the University.

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Mr. Robert Strausz-Hupé, of the University of Pennsylvania, is on a three-month leave of absence to complete a special assignment for the Office of Strategic Services.

Professor Paul K. Walp has secured leave of absence from the University of Tennessee to do personnel work with the U. S. Army Engineers.

Professor Werner J. Cahnman, of Fisk University, has been made a research associate of the Julius Rosenwald Fund and is in charge of a project on race and culture contacts.

Lieutenant Edward W. Carter, of the U. S. Navy, now on leave from the University of Pennsylvania, is stationed at the Cape May, N. J., Naval Air Station.

Mr. Clarence Senior, formerly director of the Inter-American Institute, University of Kansas City, has been appointed chief of the Latin American Division, Office of Exports, Board of Economic Warfare, in Washington.

Major General David P. Barrows, chairman of the department of political science at the University of California, began on February 22 a program of broadcasting (to Western states only). Five evenings a week (Monday through Friday), at 9:30, he comments on the news, especially war news, over the Mutual network. During the spring semester, he continues a limited amount of teaching at the University.

Professors Lloyd M. Short and C. C. Ludwig, of the University of Minnesota, are serving as chairman and member, respectively, of a committee appointed to conduct an open competitive examination for the newly created position of civil service director for St. Louis county (Duluth), Minnesota.

Professor John Day Larkin is on leave from the Illinois Institute of Technology and is serving as one of the representatives of the public on the National War Labor Board.

The political science department at the University of Washington has started a series of radio round-table discussions on the Seventy-eighth Congress.

The department of political science at Marshall College was host to the Ohio Valley Conference of International Relations Clubs, October 31, 1942. Approximately one hundred students from Ohio, Kentucky, and West Virginia attended the conference. The principal speakers were Professors Clyde Eagleton, of New York University, and W. Leon Godshall, of Lehigh University.

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Dr. Conley H. Dillon, of Marshall College, has been granted leave of absence for the current academic year, and is at present a price research and surveys officer with the West Virginia State Office of Price Administration. His position at Marshall has not been filled.

Dr. William I. Cargo, of Colorado College, has accepted a research appointment in the State Department at Washington, and Miss Edith C. Bramhall, who retired as professor of political science last June, has resumed teaching.

Dr. William G. Torpey has been promoted to a position as administrative assistant in the Commandant's Office, Third Naval District Headquarters, New York City. He was a Navy Department delegate to the Federal Personnel Management Conference held in New York on January 14–19.

At a meeting held in New York on February 27, the Commission to Study the Organization of Peace presented its third report, entitled "The United Nations and the Organization of Peace." Among those who took part in the program were Professors Quincy Wright, of the University of Chicago, Clyde Eagleton, of New York University, Carter Goodrich, of Brown University and director of the World Peace Foundation, and J. B. Condliffe, of the University of California.

The Secretary-Treasurer reports that the REVIEW is now being mailed to members of the Association on every battlefront of the United States. Members of the Association from Guadalcanal to Iceland report that they are receiving the REVIEW and indicate their gratification at being able to maintain this contact with their academic institutions and colleagues.

An *Elections Calendar* for 1942 and 1943 was published in February by the Bureau of the Census as the first of its elections reports for the year 1943. This new step toward fuller dissemination of information on elections in the United States was taken in response to requests from (1) the American Political Science Association's Committee on Election Statistics, and (2) the War and Navy Departments, which desired information about the extent and timing of elections in connection with absentee voting of the armed forces. Since 1938, the Bureau of the Census has published information annually on referenda in states, and in cities having a population over 25,000. In 1940, the American Political Science Association passed a resolution advocating development of authoritative, comprehensive, and regularly-published reports on election results, and appointed a committee, with Professor W. Reed West of George Washington University as chairman, to foster this project and induce the Bureau of the

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Census to undertake it. While anything approaching comprehensiveness in the publication of election results has been postponed by the war, the new *Elections Calendar* may be said to give a summary view of the number and distribution of elections, for each of which the American Political Science Association's resolution urges compilation and publication of results.

Since the February number of the REVIEW went to press, the Universities Committee on Post-War International Problems, under the chairmanship of Professor Ralph Barton Perry of Harvard University, and acting in coöperation with the World Peace Foundation, has made important progress in the carrying out of its program. Coöperating faculty groups are now in existence or in process of formation in one hundred colleges and universities. The list includes institutions located in all parts of the country, among them twenty-five state universities. Three analyses of significant international problems have thus far been prepared under the editorial direction of Professor Arthur O. Lovejoy of Johns Hopkins University. These have dealt with the following topics: (1) "Should the governments of the United Nations at this time formulate and announce a 'common strategy for peace'?" (2) "By what method and through what stages should the final peace settlement be reached?" (3) "Treatment of defeated enemy countries—Germany." The fourth analysis, to be prepared and distributed early in April, will be on the subject: "Treatment of defeated enemy countries—Japan." A meeting of the Central Committee was held at the World Peace Foundation, 40 Mt. Vernon Street, Boston, on March 28. Professor Kenneth Colegrove, of Northwestern University, has been added to the Committee's membership.

MEMORIALS

Samuel Northrup Harper. The death of Samuel Northrup Harper on January 18, 1943, is a notable loss to American scholars. The loss is felt especially at this time when a thorough knowledge of Russian affairs is of such importance to our country. Samuel Harper was born on April 9, 1882, the son of the distinguished president of the University of Chicago. He did his undergraduate work at the University of Chicago and his graduate work primarily at Columbia University and l'École des Langues Orientales Vivantes. As a young man, he spent several years in Russia mastering the language, customs, and literature of the land of the Czars. He continued to visit Russia throughout his life, thereby keeping up his intimate contact with the people and institutions of that country.

Harper first taught Russian institutional history at the University of Liverpool, but in 1915 he became a member of the faculty of his Alma Mater and eventually was promoted to the post of professor of Russian language and institutions. He was the author of a series of books relating

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to civic training in Soviet Russia, and he became a leading authority on Russian affairs, the *New York Times*, on one occasion, speaking of him editorially as the leading authority on Russia in this country. It was quite appropriate, therefore, that the Department of State of the United States and other governmental agencies should frequently seek his advice, and he was in constant demand as a lecturer on Russia before academic societies and public forums. He made many notable contributions to the annual programs of the American Political Science Association.

It is doubtful whether Harper had any fundamental sympathy for either Communism or Bolshevism, but he was so deeply devoted to Russia that he was ready to defend its policies regardless of the form of government at the moment. As a result, his position was often misunderstood. But he always enjoyed the affection of those who knew him; for to the end he had a zest for life, a sense of humor, a spontaneity and geniality, which made him one of the most beloved scholars of this country. It is to be hoped that his notebooks and other manuscript papers on Russia will be published for the use of scholars.—WALTER LICHTENSTEIN.

Harry Augustus Garfield, seventeenth president of the American Political Science Association, was born at Hiram, Ohio, October 11, 1863, and died at Williamstown, Massachusetts, December 12, 1942. His election to the presidency of this Association attested the high esteem which American political scientists felt for him as a civic leader and public servant, as well as a teacher of politics and educational administrator. Dr. Garfield taught Latin and Roman history at St. Paul's School, and law at Western Reserve University, before going to Princeton as professor of politics under Woodrow Wilson. He continued to take an active interest in teaching the science of government after becoming president of Williams College. But his national reputation rested more upon his services as a practitioner than as a professor of political science.

Dr. Garfield first showed his strong bent for the application of theory to practice while a young lawyer in Cleveland by organizing the Cleveland Municipal Association (now the Citizens' League) and serving as its first president. Later, during the first World War, he was called to Washington by Woodrow Wilson to serve as chairman of the price-fixing committee in the Food Administration and was soon appointed head of the United States Fuel Administration. After the War, he organized the Institute of Politics at Williamstown to promote a better understanding of international affairs in this country and pave the way for a more positive American foreign policy. Throughout his long life he was zealous in the active service of his community. His sense of community gradually expanded from the local to the international, and toward the end of his life his interest was more and more absorbed by the effort to organize the world on a sounder politico-scientific basis.

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Dr. Garfield's aptitude and efficiency as a practical political scientist were best displayed by his management of the Fuel Administration and by his leadership of the Institute of Politics. The Fuel Administration was successful in increasing the production of coal and conserving it for the most essential war needs. "Heatless" days, and other drastic regulations, did little to make their author popular, but his courage and determination were universally respected. The work for world peace was less sensational and less immediately successful. It is too soon, however, to pass final judgment upon the results of the deliberations of the scholars and publicists whom Dr. Garfield gathered about him during a dozen summers at Williamstown.

In all his relationships and activities, Dr. Garfield was aided by a serene and harmonious personality. He combined a sincere respect for the natural dignity of man with a natural taste for reasoned aims and moderate measures. He possessed a profound faith in man's practical capacity for helpful coöperation with his fellows. He was a man of deep religious feeling, manifesting a romantic devotion to the Christian ideals of the old New England. His was a career in which all political scientists can find just cause for professional pride.—ARTHUR N. HOLCOMBE.

Abbott Lawrence Lowell. Thirty-six years ago, the American Political Science Association elected A. Lawrence Lowell of Boston as its fifth president; a little more than a year later, he was chosen to be the head of America's oldest university. His interest in the science of government and in higher education was a joint interest at that time and remained so to the end of his days. Despite the advancing weight of years, he continued his writing in both fields until a very short time before his death on January 6, 1943. He liked to write, wrote without effort, and it can almost be said that he laid down his pen to die.

By chronology Dr. Lowell was a mid-Victorian and by birth a Bostonian of the Brahmin caste, but temperamentally he was neither. All the way through life he was at war with traditions of one kind or another—in political thought, in the practice of government, and most of all in American university education. His *Essay on Government*, published in 1889, gave students of political science a number of new ideas to think about, and seven years later his two-volume study of *Governments and Parties in Continental Europe* brought home to them, for the first time, the very important but largely unnoticed part which political factions and *blocs* were playing in the governmental systems of France, Germany, and Italy. Then, in 1908, came his *Government of England*, a work of such erudition, perspicacity, and shrewdness of judgment that it promptly placed him in the top rank among students of comparative politics. Alike in substance

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and style, these treatises were of an excellence that very few scholars in the science of government could hope to attain.

In these earlier writings Lowell disclosed himself a disciple of Bryce, whose intimate friend he was, and whom he greatly admired. Both were more interested in the physiology of politics than in the anatomical structure of governments. Both had intellects of the panoramic type and preferred to view the landscape of politics in a series of broad sweeps rather than to explore the nooks and corners of it. Both Bryce and Lowell, moreover, were gifted with phenomenal memories and could draw from their storied minds a wealth of illustrative touches which gave vividness to what they wrote about the realities of political rulership. In this respect, Lowell had no peer among his contemporaries. Those who were his students during the years (1897–1909) when he taught a large introductory course at Harvard will well remember the amazing adroitness with which he drew forth apt illustrations and pertinent anecdotes from what seemed to be an inexhaustible fund of them. And in his lectures, to a much greater extent than in his writings, he displayed a subtlety of humor that was not only deft but dependable.

After his inauguration as twenty-fourth president of Harvard in 1909, Lowell's interest became increasingly absorbed in questions of educational policy, but his *Public Opinion and Popular Government* (1913), and *Public Opinion in War and Peace* (1923) proved that reflections on the ways of men in politics were still occupying a place in his mind. During these years he also found time to write and publish a considerable number of articles on various questions of public policy.

The presidency of Harvard University is assuredly a full-time responsibility, and Dr. Lowell looked upon it as such. Harvard's problems and interests had the right of way. All else was merely spare-time avocation. The main task which he undertook in 1909 was nothing less than the reconstruction of his university, both plant and curriculum, and although the proportions of such an enterprise would have daunted most men, Lowell managed to accomplish before his retirement in 1933 virtually all that he had set out to do. The growth of Harvard in buildings, staff and financial resources during these years, as well as the marked improvement in its standards of undergraduate education, will probably be his most enduring monument.

Those of us who enjoyed the privilege of long and close association with Lawrence Lowell found no difficulty in recognizing his almost unique combination of personal qualities. His agility of mind was such that he sometimes exceeded the speed limit in reaching conclusions (or at least his associates thought so), but he never allowed his trend of thought to be diverted from the main issues. Right or wrong as the future may prove

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them to be, his ideas concerning higher education were all his own, and there was never anything ambiguous about them. Not only that, but they were presented with clarity and pushed to fruition with tireless energy. Both as an educational leader and as a political scientist, he gave a man's full contribution of service to his own generation.

Born of distinguished lineage on both sides of the house, and brought up in an exclusive circle, President Lowell was nevertheless one of the most approachable of men and his unforced affability drew to him a wide circle of loyal friends. His loyalty to them, in turn, was of the kind that persevered through ups and downs. He neither sought nor disdained popularity with faculty, students, alumni, or public; but it came to him in recognition of his mastery of his job, his sincerity, and his consideration for the feelings of others. In short, he was a stimulating personality, fervent in spirit, an animating force in any group that he entered, holding unequivocal views and never averse to expressing them; but always kindhearted in thought and action. The whirlwind sweep of events during the past decade has cast a shadow of obsolescence over his writings on European governments; but they were sturdy contributions in their day and aided many thousands of Americans to a clearer understanding of Old World politics. —William B. Munro.

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BOOK REVIEWS AND NOTICES

Business as a System of Power. By Robert A. Brady. (New York: Columbia University Press. 1943. Pp. xx, 340. $3.00.)

This volume deals vigorously with a neglected subject. For many years economists have been writing about the influences of trusts, cartels, monopolies, and other combinations "in restraint of trade" on what is called, metaphorically, "the mechanism" of the market. Now Mr. Brady takes up concentrations in business, especially over-all, or "peak," associations, such as general manufacturers' associations and chambers of commerce, with particular reference to their tendencies and powers in relation to the social and political affairs of nations.

Like all works on human affairs, Mr. Brady's book may be divided, for convenience, into statements of fact and assertions of opinion, often intermingled. It gives us new and impressive information on business concentrations and on business policies in six countries: Germany, Italy, Japan, and France (the totalitarian "orders"); and Great Britain and the United States. For some reason, Mr. Brady omits Russia, where "politicians," without economic experience of any significance, forced a concentration and "order" on industry and agriculture. In the main body of his text, aside from various reflections and ethical hints, the author confines himself largely to descriptive and statistical data of undoubted value for students of economy and government.

After three readings of the book, I am not sure that I grasp its thesis with exactness, but the argument seems to be: (1) that the parallelisms in business concentration in the totalitarian and the liberal-capitalist nations "are so close as to make them appear the common product of a single plan"; (2) business concentration favors, if it does not force, totalitarianism and is inimical to democracy (a term nowhere institutionally defined in this book, notwithstanding the foot-note on p. 265); and (3) if something is not done about this concentration in Great Britain and the United States, democracy, popular good, etc., will be overwhelmed by totalitarianism in these two countries.

As to the philosophy—determinism or indeterminism—which enters into Mr. Brady's thinking, I confess some uncertainty. Either in the book or in my mind there is no little confusion. For example, on pages 228–229, he says that "the owners of corporate securities are steadily drifting into the status of a *rentier* class," and that management blocs in great corporations "may have next to no ownership stake in the vast properties" (see also p. 310). Yet on p. 296 Mr. Brady declares that "property is power. . . . Because this is true, growth of such [private] possessions expresses power cumulatively." On p. 313, "property holdings and clique groupings" are united. On p. 314: "In neither [big or little business] is it the

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property interest of the bulk of the corporate property holders that dominates the stage." Again: footnote, p. 314, "the managerial revolution" is dismissed as misleading and superficially plausible; on p. 311, management is subject to the direct controls which may be imposed by governmental authority.

Does economic "power" dominate politics, the politics of "democracies?" Evidently Mr. Brady believes that it does not, necessarily or absolutely, for he says that "democracy" may learn lessons from what has happened in totalitarian (fascist) countries "before it is too late," may make choices and decisions, and may escape "final destruction" (p. 320). This indeterminist thesis also runs through the eloquent foreword by Mr. Robert S. Lynd.

If so, then what is the reality of this democracy, and what is the choice or decision to be made—by whom, where, how, with what institutional means? On what appears to me to be the crux of the whole business, Mr. Brady is silent. That is, of course, his right; but since business is here treated, not as power in a vacuum, but as power *in* or *on* politics, as power in or on which politics may also operate, Mr. Brady's frame of reference would seem to prescribe a fuller treatment of politics, its nature and institutional forms. Even so, for what we have received at his hands in the way of facts and opinions we should be duly grateful.

CHARLES A. BEARD.

New Milford, Connecticut.

The Theory of Capitalist Development. BY PAUL M. SWEEZY. (New York: Oxford University Press. 1942. Pp. xiv, 398. $4.00.)

Believing that there exists in English "no reasonably comprehensive analytical study of Marxian Political Economy," Paul M. Sweezy has set out to fill the gap. In doing so, he levels an attack on the method of traditional economic theory that should earn him the gratitude of all political scientists who have been disturbed by the unreality of much economic thinking. To Sweezy, economic theorizing has been "primarily a process of constructing and interrelating concepts from which all specifically social content has been drained off," of building up conceptual apparatus intended to transcend any particular set of social relations. Because this approach unfits economics for the larger task of explaining the rôle of the economic element in the complex totality of relations which make up society, Sweezy's goal has been to write about economics as though it were a science of human relations, and to return economic theory to the field of the social sciences.

The book is divided into four parts, the first three of which deal with value and surplus value, the accumulation process, and crises and depres-

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sions. In remarkably lucid fashion, he states the main tenets of Marxian economic theory. While avoiding bootless discussions as to "what Marx really meant," he elaborates upon the master's doctrines where he finds gaps or incomplete analysis, and integrates into his structure the work of Marx's principal followers. His method is that of abstraction and successive approximations from the abstract toward the concrete, which Marx himself employed in laying bare "the economic law of motion of modern society."

For political scientists, however, the major interest of the book will lie in the fourth part, titled "Imperialism." Abandoning here the method of abstraction, Sweezy dives into the wave of the present and emerges with a Marxist primer on the state, monopoly capital, world economy, imperialism, and fascism. He has bad news for Alvin Hansen and the National Resources Planning Board. Any notions about making the state, basically the guarantor of capitalist property relations, into an instrument for furthering the interests of society as a whole are doomed, he believes. A mass party dedicated to capitalist reform, which would be required to support such a policy, could not be held together in a capitalist society. Capitalism's contradictions, then, are hopeless, and must lead to *débâcles* of war and revolution.

But Sweezy does present the possibility of a less painful death than Marxists customarily foresee for capitalism. If the war should result in a socialist Western Europe (including Britain), the United States would be left as the center of a much shrunken imperialist system, which might not have the energy to organize a final struggle with socialism. In this unstable equilibrium, imperialism would grow weaker as the advantages of the "non-antagonistic and non-exploitative" socialist economy became clearer, and the final transition to socialism might be a peaceful one.

Sweezy's work is marked by the traditional weaknesses of dogmatic Marxism. In a book professing to treat economics as a social science, the middle classes are dismissed as not "basic." For Germany, Britain, the United States, and Japan, this is simply another war of imperialist redivision, but the Russian-German war is one between socialism and capitalism, while China is fighting an anti-imperialist war of national independence. Nowhere does Sweezy specify what he means by "going socialist," but he seems to accept the Russian system. And what comes after socialism? For surely it must be, like capitalism, simply a stage in the historical and dialectical process. Unless Sweezy wants us to assume that he thinks that with the mystic act of "going socialist" the world enters a monastery, history ceases, the tensions of society disappear, and all organizational problems are solved, he owes us another book.

C. Herman Pritchett.

University of Chicago.

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The Techniques of Democracy. By Alfred M. Bingham. (New York: Duell, Sloan and Pearce. 1942. Pp. 314. $3.00.)

Though Mr. Bingham touches in the present book on practically the whole range of problems with which democracy is confronted today, his main concern is with the democratic potentialities of the so-called positive state. Democracy, the author declares, has developed as the form of government of the do-nothing state. The traditional democratic institutions and procedures presuppose and suit the automatism of the economic system. We therefore ought not to be surprised at their failure under conditions which call for the continuous interference of the government in order to keep the system going. According to Mr. Bingham, the crisis of democracy we are going through is fundamentally the symptom and the consequence of the inadequacy of the present democratic techniques, inasmuch as they do not meet the constitutional and administrative requirements of contemporary economic and social policy. Totalitarianism, in particular, is best understood as the reaction to such democratic inadequacies. Nor should we despair of the possibility of adapting the democratic machinery to the demands of an expanding state without endangering the maintenance of freedom. As a matter of fact, Mr. Bingham asserts that the service (or administrative) state will tap democratic energies inherent in human nature and modern society which have so far not been mobilized.

Mr. Bingham rests his case on the democratic implications of scientific management as expounded in Mr. Ordway Tead's various writings. Needless to say, he wants at the same time to refute Professor Burnham's gloomy prophecy of a society under the rulership of uncontrolled managers. Mr. Bingham emphatically insists that the very nature of scientific management makes the latter rather the salvation than the doom of democracy. The management of any group, he repeats time and again, defeats its own purpose if it fails to secure for the attainment of its ends the active participation of the individual members of the group. He rightly maintains that even the techniques of totalitarian governments cannot be exhaustively described in terms of reliance on blind obedience. There can be no quarrel with this thesis of scientific management. It only confirms what has been common knowledge the ages through that, to put it in Mr. Bingham's own words, neither freedom nor slavery is ever absolute. But such insight does not clarify the question of what the nature and the degree of participation which satisfy the specific requirements of industrial management actually mean for the personality of the individual worker. But, quite apart from such consideration, Mr. Bingham does not even try to prove his basic assumption that the problems of government can be adequately stated in terms of industrial management. Indeed, it

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would be hard to prove it, given the nature and scope of government as compared with the problems involved in industrial production.

However, this is not to suggest that the concrete recommendations regarding the techniques of the positive state which Mr. Bingham submits in the second part of his book are not worth close study. Special praise is due to the common sense and the soberness of the author, who rightly warns us against any panaceas. The more fruitful on this account may the present volume be for the discussion of the technical problems of democratic government.

ERIC HULA.

New School for Social Research.

Politics and Political Organization in America. BY THEODORE W. COUSENS. (New York: The Macmillan Company. 1942. Pp. xi, 617. $4.00.)

Professor Cousens has sought to combine with an orthodox treatment of American political parties material which is ordinarily ignored. Thus a discussion of the effect upon politics of such institutions as the school, church, and radio is included. The reason for the inclusion of such material, as stated by the author, is that these institutions "act constantly upon the public mind, forming within it certain impressions which the agencies of politics have to accept or at least cannot ignore." Opinions so generated combine with those arising from the more intellectual atmosphere which surrounds political and economic organizations. The individual subjected to these divergent and oft-times conflicting stimuli is compelled to make a choice. According to Professor Cousens, this choice is made on the basis of what is believed to be the individual's "vital interest." This theory of vital interests, as the author calls it, is elusive; it may be economic, religious, social, or something else. Whatever the individual believes—or should it be "says"—to be the determining factor in his political behavior is that individual's vital interest.

Under such circumstances, the necessity of political parties for the purpose of mobilizing people into electoral groups is evident. The fashion in which this organization has been achieved in the American scene is taken up in the second section of this book, which deals with the historical development of political parties. This portion of the book is disappointing.

The careful adherence to chronology as the basis for this treatment results in a combined discussion of the major political parties. Minor parties are inserted with primary reference to time rather than topic. Superimposed upon this time-table approach is the treatment of major issues. The result is that neither issues nor parties are discussed completely in any one section, but are scattered confusingly through four lengthy chapters.

Further weakening this section of the book is the tendency for political controversies to become contexts of slogans rather than fundamental

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differences. This probably results from the limitations of space available, but even this scarcely explains ignoring the importance of the frontier, the changing definition of democracy, and the impact of economic reorganization upon the character and content of party organization.

In part three, dealing with the political process in America, Professor Cousens's clarity and descriptive writing is at its best. His analysis of political leadership and organization is revealing and provocative. His description of the nominating process is well organized and clearly presented. The inclusion in the analysis of campaigning techniques of the various materials published by the national political parties in the 1940 campaign will be found helpful and enlightening. Unfortunately, the description of campaigning and of the use of political patronage is not always clear cut, and the treatment of suffrage and elections is somewhat casual.

One is impressed by the earnest effort of Professor Cousens to include all of the relevant material dealing with politics and political organization in America, but disappointed by the fact that the inclusion of so much material has driven the author to a process of cataloging in some instances and over-simplification in others. Use of this book for independent reading will be extremely limited, and its employment as a text will demand extensive collateral reading. Fortunately, Professor Cousens has included an excellent general bibliography of books and articles at the end of his volume.

DAYTON E. HECKMAN.

University of Omaha.

A New Constitution Now. BY HENRY HAZLITT. (New York: Whittlesey House. 1942. Pp. xiii, 297. $2.50.)

Problems of governmental structure have not greatly concerned political scientists of the past ten or fifteen years. Economists, geographers, psychologists, and sociologists have been so successful in proclaiming the fundamental nature of their disciplines in social reforms that many political scientists, while still retaining the name, have left the home reservation for foreign fields. The cause of bad government has been found in underlying causes, varying from starvation wages to torpid livers. The peril in this tendency lies in the rise of a demi-class: demi-sociologists, economists, geographers, psychologists, who fall far behind the advances of the fully-fledged and who generally rate considerably less than "demi" in the discipline of politics. This is not to decry the wholesome tendency to integrate social sciences, where possible, or to utilize the contributions of the experts in related fields. The danger lies in the neglect of certain phases of politics such as the problems of structure. In recent years, men like Laski, Elliott, Macdonald, and others have made valuable contributions along this and related lines, but, by and large, political scientists

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have felt that problems of this nature have been mere tinsel trimmings—rather unimportant, rather superficial, and rather dull.

Now comes a stranger to the guild and presents us with a complete volume on the structure of American government; even a veteran in the field may lose his way in its ramifications. In general, however, what Mr. Hazlitt ably proposes is a parliamentary system for the United States, and he urges that now is not the time for taking the matter to the Lord in prayer, but the time for prompt (almost breath-taking) action. He devotes the first part of his work to the sweeping reforms he would like, and the second part to what he considers the less sweeping reforms the realist might expect. For the present separation of powers doctrine he would substitute concentration of responsibility in a cabinet, responsible to a relatively small national legislature of about a hundred and fifty members. Bereft of almost all of its powers, the office of president would be retained for ceremonial and other functions usually performed by the titular executive in parliamentary systems. A joint session of House and Senate would elect the president. Since, as Mr. Hazlitt quite rightly believes, cabinet responsibility to a bicameral legislature is unworkable and the abolition of the Senate is beyond the dreams of the most fantastic reformers, he would take most of its special and coördinate powers from it and leave it a chamber for delaying action. In addition, he recommends that the process of amending the constitution be changed to provide for amendment by a majority of the national legislature and a majority of the people in a majority of the states. Numerous other reforms are suggested which spell a complete change in the structure and operation of the federal government. It is all very suggestive, very challenging, and very refreshing.

Mr. Hazlitt feels that great danger lurks in our present system of divided responsibility between Congress and the executive. Out of the chaos that results from such a system, he fears that short-cut solutions, such as the setting up of a dictatorship, are likely to emerge. He points to South American countries where the presidential system finally gave way to strong-arm executive management. While some parliamentary systems have gone the same way, he believes that an imperfect form of parliamentarism was the underlying cause, as, for instance, the bicameral system and the fixed term of the legislature in France.

Two general criticisms might be made of this work, neither of which derogates from Mr. Hazlitt's main thesis. First, there is the common error of which many advocates of the parliamentary system are guilty—the exaggerating of the quality of the personnel, the responsibility, and the general behavior of the British Parliament. At least, all Britons are not as sure of these things as Mr. Hazlitt. There are still Englishmen who wonder whether members of the House of Commons have "a brain and cerebellum too." Very acute, indeed, is the situation when His Majesty's

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Loyal Opposition does not have money enough to risk an election. So infrequent in the present century have been changes in the ministry on an adverse vote of Parliament that some troubled English minds wondered whether the *rapport* between cabinet and legislature was amiable even to the point of conspiracy. Mr. Hazlitt must also know that sparse attendance is the rule in the House of Commons because, as some Englishmen say, everything of importance is done by the cabinet.

Secondly, Mr. Hazlitt falls into the error of most advocates of constitutional change. They "freeze" too much into the constitution. Mr. Hazlitt would fix constitutionally the magic numbers, nine for the Supreme Court, ten for the cabinet, a hundred and fifty for the house. If the British constitutional system has one great virtue, it is its flexibility, because no one has painted an exact detailed picture to which it must conform.

The general suggestions for reform made in this book are altogether sound and reasonable. They will not be adopted.

JEROME G. KERWIN.

University of Chicago.

America at War; A Geographical Analysis. EDITED BY SAMUEL VAN VALKENBURG. (New York: Prentice-Hall Inc. Pp. xiv, 296. $2.50.)

A war situation changes the activities of everyone in a nation. In scientific fields, this takes the form of diverting the scientist from work which he considers of most value, in and of itself, to some work pertinent to the war. *America at War* is the result of the current war situation. It is a collection of nine articles by six geographers[1] on subjects pertinent to America's position in the war, and is designed "to put the geographical point of view on the war—seen from the American angle—before the public" (p. ix).

America's physical features, particularly her coast lines, are described, but most of their military significance is omitted. On the other hand, America's island defense bases are thoroughly and competently covered. Outside of North America, topography is discussed only in showing the adaptation of the strategy of particular military campaigns to particular terrains. Climate is discussed not only from the military strategy point of view, but also from the general geographic point of view. Even the war, however, cannot excuse the attempt to fit the whole field of climatography into eleven pages.

The treatment of industrial capacity of the world is extremely cursory, while the raw material situation receives careful and detailed description. Since both of these treatments are world-wide in scope, it is surprising to find that the chapter on foods is confined strictly to the United States,

[1] Wallace W. Atwood, Jr.; W. E. Ekblaw; Ellsworth Huntington; Clarence F. Jones; E. B. Shaw; Samuel Van Valkenburg.

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even though the primary food problems lie outside that country. More critical than either raw materials or foods for the Allies, and perhaps for the Axis, is transportation. Yet there is not even a cursory treatment of the geography of war transportation.

In evaluating the human element, Ellsworth Huntington draws upon much of his past work in this field. Those who have followed this past work will know how to judge his chapter on "The Quality of the People." Those who meet his work for the first time will find his statistics insufficiently explained and his proofs, therefore, inconclusive.

America at War is suitably concluded with a chapter entitled "America and Peace." Here it is suggested that pre-war political boundaries remain essentially unchanged, that nations be grouped into cultural federations and into free-trade economic federations, and that all tropical colonies (India and Burma excluded) be handled under a mandate system. The plan is admittedly not complete and not final. Its main novelty lies probably in the proposal that while political units be left as they stand, they be combined, not into a world federation, but into continental federations.

The book is not "Geopolitik," and it does not contain any political geography. It is rather a conglomeration of geographic material pertinent to the war, in simplified form, with some military geography and a peace plan thrown in.

NICHOLAS HELBURN.

University of Wisconsin.

The Policy of the United States Toward the Neutrals, 1917–1918. By THOMAS A. BAILEY. (Baltimore: The Johns Hopkins Press. 1942. Pp. xvii, 520. $3.50.)

The volume comprising the Albert Shaw Lectures on diplomatic history for 1941 is a valuable contribution to the literature on the diplomacy of the World War of 1914–18. It corrects the impression which some may have had that, after the United States became a belligerent in 1917, this country, inconsistently with the course it had followed as a neutral, disregarded in a sweeping and ruthless fashion the legal rights of neutral states. Professor Bailey makes it clear that he has written a history of policy and has not attempted to analyze the machinery through which the United States sought to carry out that policy. He has not undertaken to draw analogies between the other world war and the present one. He has given special attention to the idealism of President Wilson as it found expression in consideration for neutral states.

There are separate chapters on the negotiations which the United States carried on with European neutrals on such matters as rationing and tonnage, followed by a chapter on relations with the group of Latin Ameri-

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can neutrals. The author considers specific devices which belligerents used, e.g., embargoes, blacklists, bunker coal control, postal and cable censorship, hovering, extension of contraband lists, mining of the open sea, requisitioning of vessels, angary, tonnage arrangements, propaganda in neutral countries, blockade, removal of persons from neutral ships, search of mails in ports, conscription of neutral aliens, improper detention of vessels, violation of neutral jurisdictional waters, and financial blockade. There is a classification of questions which arose, with indication of whether the United States while a neutral had taken positions on them, and of the course which the government followed after it became a belligerent. The author compares American policy with British, and notes certain instances (as at p. 233) in which Americans and British seemed to work at cross purposes.

Professor Bailey commendably weighs the significance of protests alleging illegality, as compared with patent or proved violations of the law. He finds very few clear-cut, proved violations of international law on the part of the United States—including the conscription of aliens of neutral nationality (as to which the President and State Department took action in 1918 to effect their discharge from the army), and the detention of the Dutch steamer *Zeelandia* (for which the United States paid damages after an award by an international tribunal). One isolated case of violation of Mexican jurisdictional waters he considers to have been due at least in part to a misunderstanding. It is the author's conclusion that in trade and bargaining agreements with European neutrals the United States drove bargains as hard as the traffic would bear, although without causing any great suffering in the countries concerned. The "most spectacular single act of force employed by the United States against the neutrals," the taking over of eighty-seven Dutch ships in American ports, he finds consistent with preëxisting law. Some measures taken, while irritating to neutrals affected and sometimes exciting the "usual charges of misunderstanding and hypocrisy" (p. 199), were clearly within the law. There is a realistic suggestion that, coming into the war as late as it did, the United States did not face the necessity of resorting to certain measures, such as financial blockade, which the British used.

Certain relatively small matters seem to merit notice. To say that the British regarded the Washington government as a "sovereign agent" (p. 130) might appear to be a statement of the obvious. It is difficult to see exactly how President Wilson, in reply to a suggestion concerning the legal taking over of the Dutch ships, did not reveal his "uncompromising adherence to idealism" (p. 209). In the opinion of the reviewer, there might well have been more attention to customary international law relative to the involuntary service of aliens in the army. There would probably be some difference of opinion concerning the seriousness of such

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actions as censorship of mails in American ports and American participation in the mining of the open sea. However, these matters have to do mainly with methods of expression and relative emphasis, and should not detract from the usefulness of the volume.

ROBERT R. WILSON.

Duke University.

The Russians. By ALBERT RHYS WILLIAMS. (New York: Harcourt, Brace and Company. 1942. Pp. viii, 248. $2.00.)

Soviet Asia. By R. A. DAVIES AND ANDREW J. STEIGER. (New York: The Dial Press. 1942. Pp. 384. $3.00.)

For more than a quarter of a century, the author of the first of these two volumes has been a faithful student and consistent apologist of the Soviet experiment. The extant volume is, to a considerable extent, a recapitulation of what he has said in earlier ones; but it is a recapitulation for which the war and the Soviet's resistance provide a glaring backdrop; and it is the author's immediate purpose to use his material in such a way as to provide the Soviet's English-speaking allies with an explanation of the Soviet Union's successful turning of the Nazi tide. In this reviewer's opinion, Mr. Williams has produced one of the most straightforward and intelligible brief surveys of the Soviet system that has yet been published.

Like Anna Louise Strong and Joseph E. Davies, Mr. Williams was proclaiming his faith in the Soviet's power to resist the Nazi hordes successfully even when they were hammering at the gates of Moscow. That faith was grounded upon the accomplishments of the past twenty-five years, upon the growth of industry, the collectivization and improvement of agriculture, the careful and efficient planning, the uncompromising national self-denial which made possible the pursuit of a policy of guns instead of butter, and the patriotism and faith which the Communist ideology has instilled in the Russian masses. He reiterates these accomplishments and, by implication, suggests that if his earlier reports about them had been taken more seriously, the non-Russian world might not have been so surprised and seemingly mystified by the evidence of Soviet military power.

The second volume, by Messrs. Davies and Steiger, introduces the reader to the various regions and republics beyond the Urals and the Caucasus, that vast area of Asiatic Russia which even the present generation is more likely to associate with the exploits of Genghis Khan and Tamerlane than with those of Lenin and Stalin. In form and content, the volume suggests a glorified Baedeker with explanatory footnotes and the more persuasive type of travel folders generously interspersed in the text. It nevertheless provides a competent account of the far-reaching social and economic changes which have elevated areas that were little more

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than colonial territories a quarter of a century ago to the status of political and even economic equality with European Russia. Especially impressive are the authors' accounts of the migration of Soviet industry to the Urals, of the improvement of transport and agriculture, and of the success which has attended the Soviet's efforts to gain the loyalty and active coöperation of non-Russian peoples.

From the point of view of the non-Communist, the weakness of both of these volumes is that of practically all apologias of the Soviet system. It is the failure to come to grips with that system's totalitarian and authoritarian institutions and to provide a frank examination of the monolithic nature of its society, its denial of political freedom and civic security, and its reliance upon arbitrary rule. Messrs. Davies and Steiger ignore these matters altogether. Mr. Williams, on the other hand, still has some qualms about them, and he provides the thesis that these unlovely characteristics are not inherent in the system, but the product of revolutionary and military necessity. Once the major internal adjustments have been made and the Union has a real guarantee of external security, he believes, Communist Russia will become a free and democratic society. To support this thesis, much reliance is placed upon the generous principles of the Union's new constitution. It is a familiar thesis, grown somewhat threadbare by constant reiteration; and for this reviewer at least it is no more convincing today when the Soviet purges are universally commended as elementary precautions taken in time against potential Quislings than it was a half-decade ago when these same purges were generally regarded in the West as irrefutable evidence of the inherent lawlessness of the régime.

It is none the less to be hoped that the admiration for the Soviet's magnificent stand against the aggressor and the prevailing tendency to look upon things Russian with more candor and less heat will give these pages the attention they deserve. Their careful perusal might serve to extirpate some of the more absurd illusions about the Soviets—illusions which, if persisted in, can only warp judgment and support policies in the non-Communist world which invite disaster. It is time that the world outside Russia understood that Communism, as interpreted by the Soviets, can produce and conserve wealth; that the Soviets have successfully provided the managerial techniques of an almost completely collectivized society; and that Soviet bureaucratic methods are usually as effective as the most ruthless efficiency expert could desire. From these pages, too, might be learned much of value as to the probable direction of Soviet Russia's post-war policy and as to the conditions she would accept for friendly co-existence with her present allies among the United Nations.

But perhaps the most important fact to be learned from these two volumes is that of the Soviet's successful transformation of millions of primitive peasants into the specialized and skilled artisans required by an in-

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dustrial society. Hitler's failure to learn of this accomplishment, or his unwillingness to heed it, brought him his Stalingrad. There are others who should heed it, particularly those in Britain and America who secretly or openly support some form of post-war Anglo-American imperialism based upon the assumption that backward peoples are incapable of building an industrial civilization. If muzhiks can become mechanics in Russia, at least the logical corollary is that all the world's muzhiks can become mechanics.

ARNOLD J. ZURCHER.

New York University.

The Nazi State. By WILLIAM EBENSTEIN. (New York: Farrar and Rinehart. 1943. Pp. xi, 355. $2.75 trade ed., $2.00 college ed.)

A régime which started with an emergency decree based on a propaganda lie, and having as its foundation an enabling act obtained by unconstitutional means, could hardly be expected to stay within the limits of law and order. Professor Ebenstein makes it abundantly clear how internal and foreign policy is interwoven and how the Nazis, in conquering one "neutral" nation after another, followed exactly the same method they had applied in conquering the German people. In this struggle for life and death, only the stars are neutral. Professor Ebenstein does not claim neutrality. He is not, therefore, less scientific. His book not only is the most recent systematic description of Nazi Germany, but also is distinguished by its comprehensiveness and wealth of up-to-date factual material. It is based almost exclusively on German sources, which makes for an objectivity hardly to be achieved otherwise.

Despite the mass of detailed data, the reader is absorbed from the first to the last page. The book is descriptive in nature. Analysis is incidental and subordinate to the presentation of facts. History is given as background whenever necessary in each chapter. Occasionally the author enlivens his story with an ironical remark or a well-coined phrase, as when he points out that the real formula of Germany's war economy is not "butter or guns" but "butter through guns." The chapters on law and justice, art and literature, education, war economy, and foreign policy are especially good.

There are a few errors and omissions: so important a paper as the weekly *Das Schwarze Korps* ought to be mentioned when dealing with the press; Conrad Veidt (p. 142) left Germany years before Hitler came to power; the Protestant Church as such has, to this reviewer's knowledge, never accepted the "Aryan clause" (p. 214), and Protestant ministers of Jewish descent were functioning as late as 1937. Naturally there are many points where students of Nazi Germany will disagree with the author's interpretation. Whether the function of the party can be rationalized as that of a

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super-police (p. 68) seems doubtful, considering the silent opposition of hundreds of thousands of disappointed party members. The author's implied explanation of Rudolf Hess' flight to England is rather questionable; and why the administration of German universities was less democratic than in the United States (p. 163) is hard to see.

These are minor points. One major exception, however, has to be taken. The author's strong anti-Prussian feelings cause him to link Nazism with Prussian-German history and to view Hitler as the logical successor of Frederick the Great and Bismarck. Yet Prussia has produced not alone the Junkers, but also Kant, Stein, and Humboldt. One has only to compare the present régime with the thrift and incorruptibility of the former administration in order to see what the Nazis have done to Prussian tradition. Could there be a miller of Sanssouci today? The leader himself, as un-Prussian a character as one can think of, was, after all, imported from Austria.

Professor Ebenstein's book will be equally welcomed as a text, as research material, and as reading for general information.

HEINZ GURADZE.

Park College.

Economics in Uniform: Military Economy and Social Structure. By ALBERT T. LAUTERBACH. (Princeton University Press. 1943. Pp. x, 282. $3.00.)

Under the auspices of the Carnegie Corporation of New York, the Emergency Committee in Aid of Displaced Foreign Scholars, and the Oberlaender Trust, the author has made many-sided and often very acute inquiries concerning the nature and the function of war economy. The results of these studies are now summarized in this book. By war economy, the author understands both the preparation for war by regulating the economic life of a country and the economic life of a country during the stress of the war.

The author follows two lines of investigation, with different degrees of success. The one is an historical and descriptive survey concerning the development and the accomplishments of the system; the other is a rather theoretical investigation as to its fundamental meaning, origin, and possible development after the establishment of peace. In the description and evaluation of war economy which has found its unparalleled culmination in Germany, both in theory and in practice, in the form of the *Wehrwirtschaft* and absolute Totalitarianism, the author has performed a thoroughgoing and illuminating analysis. Especially from the point of view of the political scientist, his results are of a great value. They strikingly support the conclusion that the system of Hitler was not the invention of the Führer, but that both the military and economic innovations of the Nazis are deeply rooted in the dominant trends of German history.

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Although numerous works have been written on the Nazi economic system, the author has elaborated many new points throwing light upon certain aspects of the Nazi experiment. We can see, for instance, more clearly than before how erroneous is the interpretation of some intransigent Marxists who try to portray the victory of Hitler as the ultimate triumph of capitalism. It is perfectly clear that the German *Wehrwirtschaft* has been neither socialism nor capitalism. Another interesting point is the demonstration that the "Strength through Joy" movement was not a new departure in the field of social policy, but that it meant an "extra-economic compensation for the workers for the increased length and intensity of their labor," with the continuous decrease of their subsistence level. Also the "miracle of German prosperity," which some American capitalists so warmly admired, meant that "the income which was controlled by the state increased enormously and was invested in steel, concrete, and explosives, while that portion which was devoted to private consumption diminished."

The whole picture of the experiment shows also the amazing blindness of the statesmen of the Western democracies who thought continuously in terms of appeasement while the war economy of Germany headed continuously and with an ever-increasing momentum toward the planning of the totalitarian war. Similarly, it is general knowledge that many blunders were committed by the United States in the arming of Japan for her totalitarian war; and when one reads the whole story in the author's comprehensive presentation, this policy seems almost incredible or criminal.

When, however, the author approaches the problem of the deeper roots of war economy, totalitarianism, and the probable features of our economic life after the war, the reviewer cannot feel the same satisfaction as with the descriptive analysis. In these parts the method of the book becomes far more eclectic—almost a *bellum omnium contra omnes* of divergent economic theories—without any convincing structure of thought. Even the often-mentioned distinction between war economy and normal economic life is not sufficiently elaborated. The cause of this ambiguity lies in the fact that the generalizations of the book are based on an insufficient field of induction. For the author, the new system is a continuation and accentuation of protectionism and totalitarianism, whereas in reality there is nothing new in the *Wehrwirtschaft*. It is simply the fundamental theory and practice of all societies concentrated around conquest and the rule of the military despot. I should urge all students of war economy to reread the illuminating analysis of a forgotten philosopher concerning the inevitable effects of overwhelming war economy upon all the political, economic, and moral features of societies living under its impact. Discussing what he called the "militant type of society" in the most different ages and cultural and racial surroundings, Herbert Spencer has described

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practically all those phenomena for which present-day authors try to find explanation in the changing pattern of modern political and economic life. (*The Principles of Sociology*, Westminster ed., II, Chap. 17). Immediately after the first world war, Max Weber admirably stated the essence of this so-called war economy: "War economy is guided by *one* end, which has (in principle) but one meaning and for which such full powers may be utilized as a peace economy has at its disposal only in the case of a 'state slavery' of its subjects. Moreover, it is essentially an 'economy of bankruptcy.' Its engulfing end virtually destroys any consideration of the peace economy to follow. . . ." The author quotes this profound and illuminating statement without drawing from it the necessary consequences: the essence of a war economy is ultimately spoliation of the workers and the consumers, whereas a normal and peaceful economic system tends toward the equivalent exchange of products among free men. The difference between the two is essentially a difference in moral values.

OSCAR JÁSZI.

Oberlin College.

The International Economy. By JOHN PARKE YOUNG. (New York: The Ronald Press. 1942. Pp. xvi, 714. $4.50.)

This book is a revision and expansion of Dr. Young's *International Trade and Finance* published in 1938, and is designed primarily as a textbook for college courses in international economics.

The author has divided his book into five parts. The first brief section is devoted largely to the nature and history of international trade. This is followed by a much longer section on "theoretical foundations," wherein are considered the theories underlying foreign exchange rates, international payments, the principle of comparative advantage in trade, and exchange stabilization. Mercantilist and classical, as well as contemporary, theories of international trade are considered. In a section on "institutions and procedure," the various mechanisms of exchange, the international money markets, and foreign lending are explained.

Political scientists will find of greatest interest the fourth section, which is devoted to international economic policies. Herein are discussed all the methods of autarchy—quotas, exchange controls, sanitary regulations, labeling, anti-dumping duties, and all the other various restrictive measures which have been conceived in the interest of economic nationalism. The section also includes chapters on American economic policy and a chapter on the rôle that the author believes the United States should play in the post-war reconstruction period. The concluding section of the book is devoted to a consideration of the course of international finance, 1918 to 1942, with special attention to British and French economy.

In regard to the post-war economic order, Dr. Young holds the view

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that the achievement of world economic stability will be largely dependent upon success in solving the political problem. National sovereignty must be modified to an extent sufficient to permit the establishment of an international organization powerful enough to guarantee security through effective use of sanctions. If "a substantial amount of coöperation" can be achieved in the political sphere, states will then be in a position to grapple with the economic problems with some expectation of success.

For the United States, two broad foreign economic policies are advocated: (1) "the maximizing of production based on the establishment of reasonably free economic relations generally throughout the world," and (2) the attainment of "as high degree as possible of economic stability, national and international." To these ends, trade should be freed through the carrying forward on a broader and a more vigorous scale the principles embodied in the trade agreements program. Inasmuch as an international currency system appears to be impractical, stable and secure exchange rates based upon coördinated currency and fiscal policies should be sought. Capital must again be loaned abroad, but under closer government supervision than before.

Throughout the volume, attention is focused largely upon the mechanisms of international trade and finance. Relatively little attention is given to the international economic controls which have been established from time to time by public and by private international unions. The experience with international commodity controls seems particularly worthy of examination in a book of this scope. Procedures developed in these fields may prove important as patterns for practice in the post-war economic organization.

In a work of such breadth, some errors or misleading statements are almost certain to appear. The Calvo doctrine is not, as the author says, "now accepted by the United States and most other nations" (p. 556). Nor is it accurate to describe the Drago doctrine as "not unlike that enunciated earlier by Calvo" (p. 559).

In contrast to many other books written as college texts, Dr. Young's book has the merit of revealing the opinion of the author on controversial economic policies. The author's sound judgment and clarity of expression should do much toward clearing the economic air for many a college undergraduate.

CROMWELL A. RICHES.

U. S. Department of Commerce.

World Government. By OSCAR NEWFANG. (New York: Barnes and Noble, Inc. 1942. Pp. xviii, 227. $2.00.)

This little volume is a straightforward plea and argument for world government in the form of a federal union. Its author has been writing and

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publishing such works for some twenty years and may be said to have contributed a more extensive and more substantial semi-utopian, semi-polemical, semi-scientific literature along this line than any other American student and writer.

The argument of the present book, chapter by chapter, runs logically. The welfare of the nations depends upon the maintenance of peace, or the elimination of the catastrophic interruptions of war; peace depends for its maintenance upon the doing of justice among the nations; the doing of international justice demands world government; and world government must be based upon consent and agreement, not on force. Turning about on his argument, the author then tries to show how world government can be safeguarded against weakness as well as against excessive power or its abuse. He discusses the arrangements which he regards as necessary for a world legislature, a world judiciary, and a world executive, and concludes with a discussion of how the system may be established at the end of the present war.

The volume is a somewhat disconcerting mixture. In general tone and outlook, and even content, it is satisfying and encouraging. Here and there, moreover, occur strikingly sane and wise judgments on key issues (the combination of equality and proportionality of representation in international conferences; the idea of the multiple executive; federalism, the minimum adequate and the maximum possible in international organization today; the danger of any great delay in international reorganization at the end of the present war; the use to be made of the League of Nations). Many specious panaceas are effectively dealt with by a liberal but effective criticism. On the other hand, traces of doctrinaire mentality appear here and there and a lack of psychological realism, together with certain seemingly sentimental obsessions. The summary given at the beginning of this review will illustrate the first. An example of the second is the plea for immediate reconciliation with the powers of the Triaxis after the war; another, the plea for immediate pooling of the armaments of the victors; another, the old idealization of the masses and their supposed desire for peace. Examples of the third are the insistence upon international control of certain "keypoints of world commerce" (Gibraltar, Suez, Kiel, Singapore, Panama) and the exaggerated complaints about restrictions on international trade, migration, and finance. In all of these matters, the author seems guilty of incredible naïveté. He does not seem to be guilty of anything more serious, however, and the defect by no means spoils completely his otherwise intelligent program.

PITMAN B. POTTER.

Oberlin College.

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Modern World Politics. By THORSTEN V. KALIJARVI AND ASSOCIATES. (New York: Thomas Y. Crowell and Company. 1942. Pp. xiii, 843. $3.75.)

Designed to stress the rôle of war in contemporary international relations, this textbook constitutes a vigorous reaction against earlier books in this field. Feeling that "the texts written prior to this war fell under the spell of the ideals of international legality and efforts in behalf of peace at any price," Professor Kalijarvi and his seventeen co-authors present a realistic study of power politics which is thoroughly up-to-date in content and point of view. The distinctive emphasis is indicated by the fact that ten out of the twenty-eight chapters deal almost entirely with contemporary warfare, including such innovations as chapters on espionage and treachery, international secret organizations, and military and psychological warfare. Moreover, two colonels and a captain are included among the contributors.

The first quarter of this extensive symposium deals with the "fundamentals of international relations," including geography, economics, and a chapter apiece on "World Organizations" and "International Law and Diplomacy." The second fourth describes "The Techniques of the Struggle for Power," and includes two contributions especially noteworthy as presenting within the confines of a chapter well-proportioned discussions of fields tangential to political science: Professor Antonin Basch on the causes and waging of economic warfare, and Professor Bernard Brodie on "Sea Power in Modern War." Part Three surveys recent events on the stage of world politics by seven regions, including Europe, the British Empire, the United States, and Latin America. The final quarter, devoted to recent trends, contains six war chapters, one on "The New Pseudoscience of Geopolitics," and two on peace planning. The volume contains a total of eighty small and large maps; and the bibliographical lists are highly useful, covering books and periodicals to within two months of publication in September, 1942. (There are also "Questions" and "Report Topics" after each chapter.)

This bill-of-fare is bound to appeal to such youths as remain in our colleges and universities, and they will be inclined to ignore the minor errors which inevitably accompany fast production. Students may be stimulated by the differing views of Harry Elmer Barnes and Professor T. P. Peardon on British foreign policy, and other such conflicts as the editor carefully points out. Many will like the realistic analyses and the emphasis on current events; but many instructors will regret the drastic reduction among some of the traditional topics. For instance, one might hope for more pages on the International Labor Organization than on the Japanese Fifth Column, especially in view of the promise of the post-

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Atlantic Charter world. There are chapters on "The Art of Generalship" and "Military Organizations and Institutions," but no extended analysis of the possibilities and difficulties of limiting armaments. Similarly regrettable is the paucity of material on mandates and colonies, and on nationalism and minorities.

The authors have succeeded in their aim of objective presentation of the policies of friend and foe, without failing to distinguish the policies of the Axis Powers and the United Nations. The treatment of recent international events suggests a display of delightfully fresh illustrations of power politics, with scarcely any indication that there are significant trends and lines of growth in international opinion and institutions, or even in American policy. Still, as the editor puts it, he is not "abandoning hope for the reconstruction of society on a basis which will allow for ideals of peace." Future textbooks on international relations will doubtless allot a larger place to military considerations than hitherto; yet the present proportion of ingredients would seem more appropriate for a course on current events than one which aims to impart a comprehensive understanding of international relations.

H. SCHUYLER FOSTER, JR.

Ohio State University.

Peace by Power. BY LIONEL GELBER (New York and London: Oxford University Press. 1942. Pp. vii, 159. $1.50.)

Strategy for Democracy. EDITED BY J. DONALD KINGSLEY AND DAVID W. PETEGORSKY (New York: Longmans, Green and Company. 1942. Pp. ix, 342.)

These are two treatises which approach the ever-pervasive and ever-present theme of the post-war order with eloquence and conviction, yet they are based on a realistic appreciation of the underlying forces of a peace to be made. Lionel Gelber, who established his reputation as a thoughtful historian in his earlier *Rise of Anglo-American Friendship,* presents a guide to what he regards as the key issue of the war and the post-war world with an unreserved emphasis on the phenomenon of power. On this basis, he reviews the failures of the Armistice period, a study which leads him to very different conclusions from those of contemporary "utopians." He rejects equally their "grandiose schemes" for a future order, in absolute instead of relative terms.

The main issue for Gelber is not the abolition of power, but the question of "who the owners are to be and how power will be used." On the friendship and the preponderance of the English-speaking peoples rests, for him, the hope of mankind for a better world. He is even ready to reiterate the much-blamed concepts of imperialism and nationalism and to defend

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many other unpopular slogans. In fact, one of the primary values of his study is the courageous attempt to cut through many dogmatic shibboleths of our day. No doubt there will be numerous people who will disagree with his suggestion of a radical partition of Germany in order to check her uninhibited aggressive nationalism. Others will see in his treatise another plea for prolonging the *status quo* of the British Empire, although even they may admit that the author rests his case not simply on national pride and prejudice, but on historical performance and present-day function. Some will resent the writer's biting criticism of the intellectuals, who are not all "wise guys." One may also miss in his analysis a full realization of the social and economic implications of the present world revolution which is inextricably tied up with this global war. Yet his clear-headed and masterful essay, replete with historical perspective, will serve as a pointed contribution to a sound discussion among responsible citizens.

As a good counter-balance to such a representation in terms of power politics, the symposium of Kingsley and Petegorsky presents an impressive study of the socio-economic and political realities, with a fortunate emphasis on fundamental principles rather than doubtful detailed blueprints. This book is a by-product of the Antioch Conference on Progressive Action and Post-War Reconstruction, which under the auspices of the alert *Antioch Review* brought together a group of remarkable minds. While it is always difficult to evaluate a symposium because of the uneven quality of its contributions, this book gathers specific strength from a common intellectual basis which is felt in every chapter. In fact, the study, apart from its useful collection of vital material, is basically a manifesto to a dynamic American democracy. It is the underlying belief of the authors, and rightly so, that this world war is part and parcel of a vast revolution in which everyone is called to be a responsible participant.

Starting with a keen analysis of the "anatomy of chaos," the volume studies first the basic difficulties of a supra-national union, specifically the future of the national state, the framework of international organization (Pierre Cot), the military machine (Max Werner), culture and territory (Albert Guérard), and the problems of minorities (Oscar I. Janowsky). The next section considers under the heading "Campaigning for Plenty" the economic implications of a better order. In this part, special mention should be made of the excellent essay, "Towards a Planned Economy," by Mordecai Ezekiel. The following two parts try to give specific answers concerning the more immediate aims and strategies of a dynamic democracy. They contain most valuable and thought-provoking discussions of such diverse problems as "What Can the Intellectuals Do?," "The Technicians and the New Society," "Foreign Policy for Progressives," "Democracy Begins at Home," and "Postscript to Pearl Harbor," which outlines a strategy for victory on the home front and the world

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front. Valuable criticism is given of many prevalent pseudo-theories (such as the managerial revolution) and a provocative *credo* is presented of post-war democracy victorious in domestic and foreign affairs.

One may often wish that the full historical knowledge of "realists" such as Lionel Gelber and the genuine "radicalism" of progressive thinkers such as the Antioch group could come together and attack the problems of the future—problems which need a full appreciation of historical realities and an undying belief in progressive dynamics in order to answer the great challenge of our time.

SIGMUND NEUMANN.

Wesleyan University.

Permanent Revolution; The Total State in a World at War. By SIGMUND NEUMANN. (New York: Harper and Brothers. 1942. Pp. xviii, 388. $3.00.)

By "permanent revolution," the author does not mean continuous revolution in the sense popularized by Trotsky, but permanence of the revolutionary order. Perhaps "permanent dictatorship" would have been a better title, for Professor Neumann commences by noting that classical constitutional dictatorships held a connotation of temporary utility during public emergencies. The modern dictatorships of Russia, Italy, and Germany, with which this volume chiefly deals, differ from the older ones, in part at least, in their professed intention of being constitutionally permanent. Yet it may be doubted if this element of permanence is a special attribute of modern revolutions, for it has often previously been the expectation of older revolutionists that their systems would be perpetuated. Certainly the republican and democratic revolutions of the past have had this intention.

The volume follows the comparative or topical method. Instead of treating each country separately, the primary bases of the new forms are examined, aspect by aspect. Thus, after a brief historical outline, there follow chapters on the Leader and his Lieutenants—the latter chapter being one in which the author is justified in considering that he has contributed a novel exposition of a neglected subject—the Revolt of the Masses, the One-Party State, and Institutional and Propaganda Control of the Masses. Two final chapters on "The Impact of War" and "Dictatorship in International Politics" serve to justify the subtitle of the book. This method of treatment has the advantage of emphasizing the common elements in the several systems, while permitting explanation of the special adaptations in particular cases. The chief disadvantage is that it prevents complete description of the revolutionary state as a unit in any one country. Emphasis is laid on the common pattern.

There need be no doubt that the revolutionary states do possess numer-

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ous common elements, and it is highly commendable to elaborate them as is done here. One may ask, however, whether the systems are equally comparable in their whole economic, political, and social structure or purpose. It is at this point that the defects of this approach are revealed. The general viewpoint of this book may be described as that of political sociology. Certain social factors which have a direct political effect—such as crowd psychology, party organization, economic disillusionment—are carefully elaborated and their significance established. Special attention, of course, is devoted to "leadership" and to its influence over the "irrational masses." In all this the author has thrown his net wide in the search for authoritative and illuminating material, and the result is a surprisingly effective distillation of the most varied types of investigation, all condensed into relatively small space (310 pages of text). But how deep do the elements of revolutionary "pattern" go? It seems that one might conclude that at a certain stage of social disorganization a particular type of leader may take advantage of the irrational masses. One thus comes to a "political" interpretation of revolution. But it is somewhat remarkable that this volume contains little on the seizure of power, a vital matter in a political interpretation. Less remarkable, perhaps, is the relative neglect of revolutionary theories or professions, except in so far as they are admitted as modes of deluding or stirring the public. Those who cannot fully accept a Machiavellian view of dictatorship will put down this most admirable and stimulating volume with the feeling that there may be—or must be—some other aspects of human madness or sanity that require elucidation.

A noteworthy feature of the volume is the extensive bibliography of over seventy pages included at the end.

H. McD. Clokie.

University of Manitoba.

Strategy for Victory. By Hanson W. Baldwin. (New York: W. W. Norton and Company. 1942. Pp. 172.)

The War on the Civil and Military Fronts. By Maj. Gen. G. M. Lindsay. (New York: The Macmillan Company. 1942. Pp. xii, 112. $1.50.)

The thesis of Mr. Baldwin's popularly-written little book is simply: "We cannot win with limited effort; Total War requires a Total Answer." We must, Mr. Baldwin maintains, "see the war whole and see it clearly." After first reviewing the strength of the opposing forces, and the situation on the European and Pacific fronts at the time of writing (April, 1942), he proceeds to prescribe means by which we may arrive at this "Total Answer."

The first requirement for total mobilization is national unity for victory, and to acquire that Mr. Baldwin believes we must have a complete re-

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orientation of the public-relations policy of the government since Pearl Harbor. The what-the-people-don't-know-won't-hurt-them idea must be replaced by a belief not only that the American people can stand the truth, but that "truth is vital to a successful war effort."

The second requirement is unification of the war effort. This involves coördinated planning in military, economic, and political fields; coördinated procurement of manpower, weapons, raw materials, etc.; and unified direction of actual military operations. The third step must be to enlist the support of every citizen and give him something to do. In this connection, Baldwin discusses at some length the importance of civilian defense work and the possibilities of bombings in this country.

With the home front properly organized, the military field can be considered. There are certain vital points that must be held—Great Britain, the Middle East and the Mediterranean, Hawaii-Midway, and India. Russia and China must be kept fighting.

The most interesting part of the book is entitled "Taking the Offensive." Mr. Baldwin discusses in turn sea power, air power, and land power, no one of which is alone sufficient to win the war. In the Atlantic, sea power must tighten the blockade of Europe, and must destroy submarines, enemy warships, and enemy coast-wise shipping whenever possible, thus further burdening land transport systems. In the Pacific, sea power becomes three-dimensional. The "ship-plane team" must be the "spearhead of victory" because of the tremendous distances. Baldwin, in fact, suggests that the capital ship of the future may well be "the heavily armored carrier, equipped with medium-sized guns."

The war has demonstrated "the smashing tactical strength of air power, used independently or coöperatively." It will be part of any plan for victory. At present, bombing is the only way the United Nations can carry the war to Germany and Italy. And bombing does "psychological damage" as well as "military damage." The events of the past months since the book was written show that he was much too conservative in his estimates of what air power alone can accomplish.

Land power must be an essential part of the offensive plan. The "diversionary landing" upon which Baldwin speculates has become fact in recent months, perhaps sooner than he expected. And his fears that Russia might be "forced out of the war," scarcely justified in 1942, should be wholly relieved after the Russian winter offensive of 1942–43.

The victory offensive should also include economic, political, and psychological steps. A "definition of war aims," Mr. Baldwin believes, is "not only a sign-post to victory; it is an absolute essential to victory."

Maj. Gen. Lindsay is an expert on tank warfare, at present serving as deputy regional commissioner in southwestern England. This book, comprising the Lees Knowles Lectures on Military History delivered at Cam-

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bridge in 1942, combines a discussion of the revolutionary effect of tank warfare on earlier ideas of military strategy with an analysis of the problem of defending Britain on the civil front. Each is in itself interesting, although the application of the principles of military strategy to the defense of Britain against invasion is not too clear.

Chapter I is a general discussion of certain "features and fundamentals" of modern war. In Chapter II, the author analyzes the use of armored and mechanized forces in offensive operations, including the "break-through attack." The first part of Chapter III shows how the German army used these methods. The rest describes the most effective strategy to meet such an attack. To be successful, Lindsay demonstrates, these defensive operations must be of a "defensive-offensive" nature. It is this "defensive-offensive" strategy which he attempts to apply, in Chapters IV and V, to the organization for defense on the home front.

HAROLD H. SPROUT.

Princeton University.

With Japan's Leaders. By FREDERICK MOORE. (New York: Charles Scribner's Sons. 1942. Pp. 365. $2.75.)

The author was for fourteen years adviser to the Japanese government. His service covered the period between 1921 and December 7, 1941, and he served continuously under Japanese Ambassadors Saito, Horinouchi, and Nomura, from 1934 to Pearl Harbor.

This is both a book of reminiscences and of observations. It is also an apologia. For not only does the author tell a rather rambling story of Japanese-American relations in terms of his personal experiences with his Japanese employers; he also tries to show that his chief purpose in working for the Japanese was to avert war between his own country and Japan. As an American, he was often suspect by Japanese for being in the employ of their government. The author relates that at the League of Nations Assembly in 1932 where he was helping Matsuoka defend Japan's invasion of Manchuria, Japanese journalists questioned Matsuoka concerning his (Moore's) relation to the Japanese delegation. Mr. Moore writes that Matsuoka said to him: "I told them that you thought you were serving your own country in helping Japan."

What Matsuoka said, Mr. Moore tries to prove in his book. He firmly and sincerely believed that by trying to bring about closer coöperation between the two countries, he would serve American interests. He admits that he saw little hope after the spring of 1941, but he continued to work for the Embassy in Washington when asked to do so by Ambassador Nomura.

There is little that is profound in this book; nor do we find a very clear understanding of Japan and the Japanese from a writer who had unusual

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opportunities for observation. The author has not gone much below the surface in analyzing Japanese policies. In fact, he shows a strong strain of materialism in his writing. Material factors, the freezing of Japanese assets by the United States, the moves for defense in southeast Asia, are given as chief causes for Japan's attack. He cites Japan's "efficient system —which had made Japan the most progressive state in Asia and her people the most prosperous" (p. 314). He attempts no evaluation of deep-rooted Japanese ideology.

In conclusion, the author believes that we must thoroughly and decisively defeat the Japanese, but he also believes that when the militarists are discredited, the Japanese will be amenable to a world of coöperation instead of aggression. Mr. Moore believes the task will be hard, and he discounts any aid in that task from the Chinese. He is very frank in assessing American ignorance of Japan's purposes, admitting he was misled, too; and he denounces our failures in defending our outposts. As one of the most able and open protagonists of Japanese policy and defenders of Japanese expansion before 1938, Mr. Moore makes no mention of the fact that part of our under-estimation of Japan was due to the effectiveness of just such arguments as he espoused before Pearl Harbor.

WILLIAM C. JOHNSTONE.

George Washington University.

Basis for Peace in the Far East. BY NATHANIEL PEFFER (New York and London: Harper and Brothers. Published in Coöperation with the International Secretariat, Institute of Pacific Relations. Second Edition. 1942. Pp. 277. $2.50.)

In ten graphic chapters and a brief epilogue, the author of this attractively bound and printed book explains the involvement of the United States in war with Japan, and expounds in forthright paragraphs the settlement that he believes to be necessary if the Far East is to escape Europe's experience of frequent wars. The treatment, which is without citation of references, is more comprehensive and more popular than that of his *Prerequisites to Peace in the Far East,* published in 1940, though it incorporates portions of the earlier work. Well-founded in his thorough knowledge of his subject, Mr. Peffer's ideas are presented in his usual enjoyable style. They are thought-provoking and entitled to the serious attention of specialist and layman alike.

Writing especially for the latter, Mr. Peffer's discussion of the imperialism and quasi-imperialism of Western states during the nineteenth century leaves an impression of over-simplification which is not carried into his later treatment of a desirable settlement. His conclusion as to causes is not wholly clear, since on opposite pages he states that "the war was over China," more specifically over "whether China should be independ-

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ent or a colony, and, if a colony, belong to what empire," and that "the issue in the Far East had narrowed down to America versus Japan, because the sole remaining threat to China's integrity came from Japan." His previous characterization of the American claim to equality of commercial opportunity as being "different in kind from the avowedly imperialist Powers" does not resolve the contradiction.

Five principles of a peace settlement are laid down: (1) the crushing defeat of Japan, (2) the attainment of complete independence by China, (3) the assurance to the Japanese of the standard of living enjoyed by modern industrial peoples, (4) the grant of autonomy and full opportunity for colonies to prepare for independence, and (5) the strengthening of China by assistance to industrialization. In subsequent chapters, he discusses the application of these several principles. There will be general agreement with his views, though many will question his belief that the more completely Japan is devastated, the sooner will her mood become pacific. His insistence upon wholesale fire and slaughter is an indictment of a whole people which he appears to disown in his extraordinarily liberal proposals for the future of Sino-Japanese relations.

Mr. Peffer does not enter into the problem of international organization for the implementing of his principles. He makes only passing and disparaging reference to internationalist measures of stabilization. This is the more remarkable in one who foresees a danger of revived imperialist rivalry over China. It would seem that we must rest our hopes for a new order in Asia, embodying his excellent proposals, upon faith in an earlier development within Asiatic states of military self-sufficiency, technical proficiency, industrial strength, social consciousness, and political unity than his own analysis of background and contemporary developments appears to justify.

HAROLD S. QUIGLEY.

University of Minnesota.

British Rule in Eastern Asia. By LENNOX A. MILLS. (Minneapolis: University of Minnesota Press. 1942. Pp. ix, 581. $5.00.)

This book is an important contribution to the understanding of the achievements of Great Britain in Malaya, the Straits Settlements, and Hong Kong—areas in which British rule recently has been more censured than praised. The author is well qualified to discuss these problems. He is a native of Canada, he was educated in Canada and England, and he is personally acquainted with Eastern Asia. He is the author of a volume on the origin of British influence in Malaya, and the present work is based upon extensive research in public documents and periodicals. He has thus combined a native sympathy for British institutions with a careful study of the records of British administration in southeastern Asia.

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The first edition was published in Great Britain in 1941. Before the appearance of the American edition, Hong Kong and Singapore were conquered by Japan. It is possible that the course of events in Asia will deprive this volume of all save historical value. In the foreword to this edition, the author affirms his confidence in the ultimate victory of the United Nations, and adds that in Malaya, at least, the basic problems of the post-war years will be "those which have been described in this book."

Professor Mills is concerned primarily with the period from 1918 to 1938. Nine chapters, constituting three-quarters of the text, deal with the Straits Settlements and the Malay States; the remaining five are devoted to Hong Kong. Among the subjects which receive attention are the forms and practices of government, economic rivalries and prospects, agriculture and trade, the supply of labor, racial complexities, finances, education, and the protection of public health. Such a volume may fairly be described as a comprehensive survey of the political economy of Malaya and Hong Kong between two wars.

The author has produced an unusually detailed volume. Indeed, the very wealth of information and the abundance of statistics will dismay many readers. Those who persevere to the end will be well rewarded by the judgments which are scattered throughout the book. The cumulative effect of these is likely to leave the reader with the picture of a benevolent empire which established great commercial entrepôts at Singapore and Hong Kong, provided a wide variety of useful public works, raised the standard of living among many of the natives, maintained reasonably acceptable political institutions, and, in Malaya, acted as the disinterested umpire in adjusting the conflicting interests of the Malays, Chinese, and Indians. The only serious opposition to British rule came from politically conscious Chinese nationalists, who saw in the British empire the bulwark of western imperialism in Asia. More surprising to American readers will be the sections in which Professor Mills compares British control of Malaya with American influence in the Philippines, to the advantage of Great Britain. These judgments are debatable. They provide, however, an antidote to the widespread and often uninformed criticism of British colonial rule which has been so prevalent in this country since the conquest of Malaya.

HAROLD WHITMAN BRADLEY.
Stanford University.

The British Empire in Australia; An Economic History, 1834–1939. By BRIAN FITZPATRICK. (Melbourne: Melbourne University Press. 1941. Pp. xxxii, 529. 21s.)

Australian Native Policy. By EDMUND J. B. FOXCROFT. (Melbourne: Melbourne University Press. 1941. Pp. 168. 10s.)

Mr. Fitzpatrick's timely and authoritative volume brings down to date his account of the economic development of Australia begun in his previ-

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ous study entitled *British Imperialism and Australia*, published in 1939. Although the title suggests that British-Australian economic relations constitute the substance of the work, the chief emphasis falls rather upon the economic development of Australia itself, particularly with respect to its pastoral economy, mining, industry, and commerce. Considerable attention is, however, given to the great importance of Australia as a field for large and profitable British capital investments, the effects of which upon the politics and economics of Australia the author shows to have been continuous and often controlling.

After an introductory chapter on the difficulties confronting a student seeking to derive reliable conclusions about nineteenth-century economic changes from the available statistical evidence, the author takes up in turn: conditions of "British Expansion, 1831–40"; "The Expansion of Australia, 1834–1940"; "Pastoral Australia in Imperial Economy, 1841–50"; "The Economic Consequences of the Australian Gold Discoveries"; "Economic Development of Modern Australia and New Zealand, 1861–90"; "Labor Relations, 1860–1912"; and "Economic Development, 1891–1912." The final chapter contains an analysis, running to more than one hundred pages, of the modern Australian community. To the student of government, this chapter is perhaps the most interesting section of the book. It goes far to refute the notion, frequently expressed elsewhere, that Australia has been in the vanguard of the procession headed in the direction of complete socialization of production and directed in the interest of labor. Both the widely publicized arbitration systems and the rôle of the government are subjected to careful scrutiny. The federal and state arbitration systems, in the author's opinion, have been so much restricted by judicial interference, as well as by ministerial manipulations, that they cannot be claimed as a protector of the workers' standard of living. Much evidence is cited to show that in most capital and labor disputes the state has taken sides with the employer. It has abandoned many profitable state enterprises and retained those, such as the railways, in which private capital saw no profits; and it nurtured private enterprise by means of tariffs and bounties. "These efforts on the part of the state," concludes the author, "have yielded a high average dividend on capital, including English capital. The reservoir of Australian labor and industry has never failed to provide a stream tributary to the broad river of English wealth. The state did much toward building the reservoir, it maintains it, and it allows no blockage of the stream that flows to Imperial England."

Mr. Fitzpatrick has written a scholarly book. Every part of it shows evidence of extensive research based on unpublished as well as published sources. A large amount of factual material is presented. Of interpretation, there is much less. This fact detracts somewhat from the volume's general appeal. But the book will prove very useful to students of comparative government.

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Mr. Foxcroft's excellent little volume tells the story of the relationship between the white inhabitants of Australia and the native tribes. And a pitiful story it is. Since the beginning of the white settlements in the eighteenth century, repeated efforts were made by governments and missionaries to civilize and Christianize the natives. This meant detribalization. It meant attempting to make farmers, policemen, and workers out of them. In the author's view, most of those who tried to apply that policy were well-intentioned, but their ignorance of the significance of native institutions and customs rendered their efforts not only futile but extremely harmful to the natives. From a population of 300,000 in 1788, the native population has shrunk to less than 70,000. And of these, fewer than a third still live under their own tribal organization. These facts show that contact with the white man's civilization has led to the "virtual extermination" of the natives. The author makes a vigorous plea for the application of the latest available anthropological knowledge to protect the remaining natives from extinction. This enlightened program will, however, he warns, require much more liberal financial aid than the Australian states and the Commonwealth have hitherto been willing to spend for this worthy cause.

ELMER D. GRAPER.

University of Pittsburgh.

A History of Latin America. By DAVID R. MOORE. (New York: Prentice-Hall, Inc. 1942. Pp. xv, 942. $4.25.)

Latin America; Its Place in World Life. By SAMUEL GUY INMAN. (New York: Harcourt, Brace and Company. 1942. Pp. viii, 566. $3.75.)

Each of the above volumes is a second edition, the original editions dating from 1938 and 1937, respectively. This coming of age—to the extent that a second edition evidences that degree of longevity—is well merited in each case: the two volumes are valuable additions to the now-much-more-than-five-foot shelf on Latin America. The two books are very different in aim, content, and style.

Professor Moore's *History* represents a considerable expansion of his first edition. The organization of the volume follows orthodox lines—the three parts into which the book is divided deal, respectively, with "The Colonial Period," "Nineteenth Century Developments," and "Latin America Today." Of the slightly less than 900 pages of text, not quite a third deal with the colonial era, about 200 with the period from 1800 to 1900, and the last 400 pages with the contemporary scene. A thirty-eight-page bibliography, the index, and about a dozen maps complete the mechanical features of the book.

There is little that is spectacular about the style of this history. It is written in a very readable fashion, but is quite obviously written as a text.

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Professor Moore has been unusually diligent in examining all facets of the kaleidoscopic panorama of Latin American development. In the two chapters dealing with international matters (the concluding ones of the volume), the author well illustrates this tendency to examine in detail into all aspects of his problem. Many phases which other authors have often slighted are in these concluding eighty or ninety pages illuminated in gratifying detail.

There is little except points of detail to criticize about the Moore history. If it is meant to be used by advanced students, footnote citations would have been helpful. Additional subheads in the ample bibliography would have made that tool more useful. A more serious fault is the lack of critical evaluation of the items in the bibliography. All in all, however, this *History of Latin America* is a worthy addition to the several historical surveys already existing.

Dr. Inman's meaty volume has a more catholic approach. In part, it is historical; but it also deals extensively—and not always with even an effort at separating them—with the economic, the political, the social, and still other aspects. Following a foreword and an introductory chapter, the five parts are: "Who are the Latin Americans?," "The Hard Road toward Democracy," "The Republics Today," "New Forces," and "The American Continent." Twenty-odd pages of critical bibliography, a list of important dates, and the index complete the volume.

The author, perhaps as much as any "North American" (to borrow the phrase which our Latin friends often apply to United States citizens), has had the opportunity over a long period of years to perfect a wide acquaintance with Latin American lands and peoples. The result in this volume is a style that is almost uniformly chatty, at times anecdotal. Dr. Inman can illustrate the many matters he discusses with a wealth of personal experience and observation.

This personal touch has the unquestioned and distinct advantage of adding vividness and color to the volume. At the same time, there is the possible defect that certain parts of the study might have been buttressed by additional research. Dr. Inman occasionally makes mistakes of fact, or perhaps at times makes careless statements which leave the impression of being mistakes. By implication, the Brazilian *coup* engineered by Vargas a few years ago is dated in January, 1938. The author writes of a new Brazilian constitution in 1845 and of the Panama Canal being begun as soon as the Spanish American War was over. The statement (p. 100) that Germany attempted "mediation between the United States and Spain over the Cuban question preceding the Spanish-American War" needs modification. What actually happened was that German diplomats in the fall of 1897 discussed the possibility of a joint European intervention on behalf of the principle of monarchy, but later dropped the idea (Cf. *Die*

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Grosse Politik, v. 15, pp. 1–9). This second edition of *Latin America* is, however, greatly improved over its predecessor in the matter of factual errors.

Dr. Inman is an incurable optimist in regard to Latin America. On the whole, his optimism seems justified. Certainly the volume is, in this respect, a good antidote to the persistent over-cautiousness reflected in Tannenbaum's *Whither Latin America?*, for example. At times, however, one has the feeling that the Inman optimism might well be tempered somewhat. With all humility for the indefensible attitude of the United States on many past occasions, it is still in order to ask how frequently Latin Americans may have admitted an incorrect policy or attitude toward the United States. Humility is not a garment that should be worn solely by *el Tio* Samuel.

The "bibliographical notes" form an indispensable part of the volume. They are valuable not only because they include critical evaluations (even if those are sometimes open to question), but also because so many unusual and unorthodox items are included. The bibliography leans heavily on Spanish sources.

RUSSELL H. FITZGIBBON.

University of California at Los Angeles.

A Latin American Speaks. BY LUIS QUINTANILLA. (New York: The Macmillan Company. 1943. Pp. viii, 268. $2.50.)

Latin America and the War. BY VERA MICHELES DEAN. (New York: Oxford University Press. 1942. Pp. 63. $0.25.)

To those who assert that Latin America is spiritually, economically, and politically closer to Europe than to the United States, Mexico's new minister to Moscow enters a vigorous dissent. By turns optimistic, flippant, realistic, and passionate, Sr. Quintanilla hammers at a single thesis. There is, he says, but one America; and that America is dedicated to democracy and to the cause of the common man everywhere.

Two chapters delineating the stereotypes which Latin America and the United States have of each other furnish the light touch. Two more, contrasting and comparing ways of living and dying north and south of the Rio Grande, are definitely not humorous. They are designed to prick the social conscience of any American who believes that the unsolved social problems are all in the other America.

Turning to inter-American relations, Quintanilla describes Simón Bolívar's grandiose conception of a united America which in close coöperation with England would lead the world to lasting peace and prosperity. The largest guns in this diplomat's verbal arsenal are reserved for the Monroe Doctrine. Since, at least as a slogan used to justify official policy, it is now falling into disuse, this seems a waste of ammunition.

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Least essential to the main argument is the chapter entitled "Swastika over the Acropolis." An impassioned defense of "democratic reason" against "fascist unreason," it includes a lengthy attack on the philosophy of Henri Bergson. The enormity of this Jewish metaphysician's contribution to Axis political theory had previously escaped this reviewer, and the indictment seems neither necessary nor deserved.

Anglo-American readers may not all accept Sr. Quintanilla's distinction between "political democracy" and "collectivist or constitutional democracy." One does not have to be an enemy of social justice to prefer a different terminology, for Quintanilla's distinction makes it easy to excuse the suppression of the former in order to achieve the latter.

Mrs. Dean describes sympathetically the "government by technicians" devoted to the economic advancement of the people (which she finds in Brazil and Peru), but she does not call the result "collectivist democracy." She notes "the peculiar divorce between the executive and the people" in Argentina, where the form, but not the substance, of democracy is preserved, and in Chile the disparity between the social goals of the government and the skills and resources at its command.

Both writers agree that Latin America must be industrialized, but Quintanilla's exposition of the difference between "good" capital (which Latin America needs) and "bad" capital (which it may one day have to confiscate) seems hardly likely to bring forth the needed funds, at least from private sources. Mrs. Dean, on the other hand, deprecates the value of intergovernmental credits, since the "poor relation" tends to feel resentful toward his wealthy benefactor.

Since one author speaks chiefly for revolutionary Mexico and downtrodden Indo-America and the other writes of the more nearly "Latin" ABC countries, these works are in many ways complementary.

WILLIAM T. R. FOX.

Institute of International Studies,
Yale University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

Justice Holmes "touched something deep in the imagination of the American people. His position in American history is secure, and he will . . . take his place in the line of great men whose existence symbolizes for us what we cherish and find difficult to define. . ." He will be remembered "for something more universal than his contribution to law. His contribution is to American life. . ." These words suggest the general point of view of Francis Biddle's *Mr. Justice Holmes* (Charles Scribner's Sons, pp. 214, $2.50), an altogether delightful portrait of the now legendary jurist, compounded out of anecdotes, reminiscences, quotations from published

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papers, opinions, and letters, and the recollections of a long and warm friendship. While a comprehensive biography of Justice Holmes has not yet been written, the materials for a full-length study are rapidly becoming available. Mr. Biddle has made an invaluable contribution to our store of knowledge of Holmes, the man as well as the jurist. As a former secretary and old friend, Mr. Biddle writes with great affection and insight of his former chief, in an effort to get at the central core of his nature, his love of life, his philosophic skepticism, his broad scholarship, his approach to the law, "historic, eclectic, experimental," his essential loneliness as a man given to thought. The book is liberally sprinkled with apt quotations from his published papers and opinions, and draws heavily upon the recently-published letters to Pollock, as well as those written to Wu and Owen Wister. One never tires of rereading the pithy remarks of Holmes which have already become part of fundamental American folklore: "the life of the law has not been logic: it has been experience"; "a page of history is worth a volume of logic"; "at this time we need education in the obvious more than investigation of the obscure"; "life is painting a picture, not doing a sum"; "every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge." Justice Holmes comes to life in this book, as well as many others whose lives impinged upon his—his father, his wife, some of his colleagues on the bench, notably Fuller, Harlan, Taft, and Brandeis. There are some excellent yarns about the Supreme Court, which is treated, not as a hallowed abstraction, but as a very human institution before whom real people argued their causes. It is a comforting thought that in these days of war, when the Department of Justice has so many extraordinary administrative powers in its hands, the Attorney General draws his inspiration from the man whose dissenting opinions during the hysteria following the last war put down in imperishable terms the principles of freedom of thought.—David Fellman.

The Federal Power Commission and State Utility Regulation (American Council on Public Affairs, pp. 301, $3.75), by Robert D. Baum, is the first full-length monograph on the Federal Power Commission to be published. It is based upon published books and articles, materials obtained at the Federal Power Commission, visits to two of the state utility commissions, questionnaires directed to twenty commissions, and conversations with members of the National Association of Railroad and Utilities Commissioners and the North Dakota commission. Though sufficient materials are included to give the reader a clear picture of the Power Commission, its history, powers, and functions, the book is not primarily a study of internal organization and management, but rather a painstaking analysis of the manner in which the F.P.C. conducts itself in an area

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where state utility commissions have a concurrent interest. The inquiry leads to an exploration of jurisdictional disputes involving the F.P.C. and the states, federal-state collaboration for the purpose of controlling water power, utility accounting, rates, and intercorporate relations. In the end, the author concludes that Congress has shown commendable consideration for states' prerogatives in drafting F.P.C. statutes; that the Commission and its personnel have been aggressive since 1930, but nevertheless coöperative, tolerant, and long-suffering in dealing with reticent, jealous, and cantankerous state commissioners; and that the procedures devised for collaboration with the states have met with a "remarkable degree of success." The study is in every way favorable to the federal agency. It has shown "full indication that it is aware of its responsibility to work closely with the states." The state commissions, on the contrary, "vary considerably in their attitude toward joint action and in general are not as prone to work with the Federal Commission as is that body with them." While this view is justified by the evidence presented, critics of centralization are likely to feel that Mr. Baum might have been less laudatory had he spent more time visiting and working with the state officials, or had he listened to some of the explosions which occur in city and town halls upon receipt of F.P.C. forms and questionnaires which are too often beyond the comprehension of reasonably competent public servants.—JOHN H. FERGUSON.

In *The Riddle of the State Department* (Farrar and Rinehart, pp. xiii, 231, college ed., $1.60, trade ed., $2.00), Robert Bendiner, managing editor of *The Nation*, writes a caustic criticism of the management of American foreign policy, disparagingly called appeasement, without full acknowledgement of the unwillingness of the American people to support a "strong" policy before the attack on Pearl Harbor. The author leans heavily upon what he calls "the record" as "in the last analysis the fairest, though not an infallible, measure" of the intentions and performance of the State Department. But that "record" is merely the writings of commentators and journalists. No indication is given that Mr. Bendiner is aware of the series of documentary materials illustrative of American foreign policy first compiled (in 1937) by the reviewer (*American Foreign Policy: Formulation and Practice*) and subsequently continued by the World Peace Foundation (*Documents on American Foreign Relations*) in annual volumes. The statement (p. 8) that "from Tokyo, Ambassador Joseph Clark Grew periodically reported that the 'moderates' were about to take power," and that Japan should be treated gently, does not square with actual reports of the ambassador or with his expressed opinion. On p. 15 it is asserted that Japan's reply to the Stimson Doctrine, January 8, 1932, "went on to make the point that China was not a sovereign state

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and therefore not entitled to have its territorial integrity respected." Had Mr. Bendiner relied upon primary instead of secondary materials, he would have found in the actual reply no such assertion. "[Secretary] Hull showed more interest in relieving the tension in Japanese-American relations than in scotching further Japanese encroachments" because American public opinion was definitely opposed to "scotching" anything by force—the only ultimate sanction which would have been effective. "No protest was forthcoming when the Japanese moved on into North China" indicates unfamilarity with the succession of protests in the real record. Lack of confidence in the rest of the book is engendered by such glaring misstatements as the foregoing. However, it contains excellent descriptions of the State Department and its subdivisions. Department personnel is identified and scrutinized in a more objective manner than are its policies.—WILSON LEON GODSHALL.

The November issue of *The Annals of the American Academy* contains another series of excellent articles on current problems in the field of the social sciences ("Labor Relations and the War," *Annals of the American Academy of Political and Social Science*, November, 1942, pp. 244, $2.00). The volume contains twenty-eight articles ranging in content from "Growing Pains of the American Labor Movement," by William M. Leiserson, to "War and Postwar Social Security Protection for the Wage Earner," by Arthur J. Altmeyer. In addition to many articles by eminent scholars, the volume contains articles by persons engaged in labor administration, including William Green and Frances Perkins. The articles are grouped under five main headings. "Recent Developments in Labor Organization," "Issues of Wartime Labor Standards," "Labor's Coöperation in the National Effort," "Industrial Peace and National Labor Policy," and "Planning Against Postwar Labor Tension." The articles are replete with interesting and valuable materials on labor. For example. William Green concludes in his article, "Should Wages Be Frozen?," that wages should not be frozen nor war jobs made compulsory, because this would rob American labor of its greatest opportunity in this war to prove that free labor in a democracy can out-produce the slave labor of a fascist dictatorship. John Steelman's "Wartime Problems of the Federal Conciliation Service" contains several examples of the problems which have confronted the United States Conciliation Service during the war and the techniques used to solve them. Clinton Golden opens his article, "Collective Bargaining and Accelerated Production," with the statement that he is starting with a discussion of perhaps the most interesting experience during his forty years in the labor movement—a story of coöperation between the United Steel Workers and a certain aircraft corporation and the excellent results obtained.—FORD P. HALL.

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County Government in Wisconsin (Wisconsin Historical Records Survey, 3 vols., pp. xxxvii, 765, mimeo.) is a product of the Wisconsin Historical Records Survey, a WPA project sponsored by the University of Wisconsin and the state's Historical Society. The publication is essentially a digest of law, past and present, relating to county government. A general discussion of the historical development, organization, and activities of counties, and of the county records system, is followed by a detailed analysis of the organization, powers, and duties of each of the seventy-seven county governmental agencies (mandatory or permissive) provided for by statutes now in force. The treatment is non-critical, and is limited for the most part to statutory provisions, court decisions, and attorney-generals' opinions, with little attention to matters of practice. The latter shortcoming is acknowledged in the preface, where the present edition of the publication is characterized as of a preliminary nature and the hope is expressed "that arrangements will be made for a definitive edition which will include a discussion of the administrative regulations and practices." In the opinion of this reviewer, the professed expectation (see preface) that the present work will serve as a "handbook" on county government would more likely be realized if less attention were given to provisions of law which are no longer in effect. Yet this historical material will doubtless be useful in connection with the Survey's inventories of archives in the respective counties, to which the present volumes are a companion publication. In any event, the volumes under review represent a prodigious amount of work, give every appearance of care and accuracy in preparation, and will be valuable for reference purposes. Though there is no index, each volume carries both summary and analytical tables of contents covering the entire work.—CLYDE F. SNIDER.

Through such studies as Gail M. Morris' *Justice of the Peace Courts in Indiana* (Bureau of Government Research, Indiana University, pp. 38), there is being built up a series of case studies in the specific field of the administration of justice in the inferior courts of the states. This study considers the extent to which this historic office has or has not become adjusted to conform with the ideas of law enforcement and court organization and procedure today. The present nature of the office in Indiana and its powers and duties are revealed by a thorough digest of the statutory provisions concerning it. From a survey of the number and distribution of justices of the peace, it is shown that there is not a popular demand for a justice in every township for the convenience of the community. In fact, at present a smaller number of justices are elected than the statutory quota provides, which indicates either that changing conditions have lessened the need or that the number originally set was too large. Here, as elsewhere, these justice courts suffer from the universal abuses of the

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fee system and from lack of qualifications. Finding that it has not kept pace with modern trends in law enforcement, and that it does not render substantial justice to the poor man, the author recommends that this inferior type of court with its untrained judge, this court originally designed for the masses which is often the "object of contempt," be replaced by responsible magistrate courts with appointive officials of good character and trained or experienced in legal procedure.—WILLIAM H. COMBS.

The experience of cities, towns, and villages in meeting the problem of properties that have long been delinquent on taxes and special assessments is presented in *Tax-Reverted Properties in Urban Areas* (Public Administration Service, pp. viii, 183, $2.50), by A. M. Hillhouse and Carl H. Chatters. Tax delinquency has been said to be of two kinds: that to which taxpayers resort because of poorly administered tax laws, and that to which they succumb because of economic conditions beyond their control, resulting in inability to pay. In a chapter on preventing delinquency and blight, the authors point out that there are basic causes of tax delinquency in cities which have not been given adequate consideration in the past. Decentralization in metropolitan areas and the resulting blighted sections have caused many sincere and honest persons who desired to pay their taxes to succumb to delinquency. The authors analyze this situation, pointing out causes and remedies. Emphasis, however, is placed upon what the authors refer to as "one of the chief causes of tax delinquency—poor administration." Many tax collecting statutes have lacked teeth; and some statutes with teeth have not been vigorously applied. In some cases tax delinquency has been a result of the lack of courage on the part of public officials. The review of the experience of cities in organizing bureaus for delinquent tax collections, in causing some property to be redeemed, in taking title to other property, in organizing offices for managing tax-deeded properties, and in eventually returning some of them to the tax rolls should be helpful to both administrative and policy-making officers who are willing to make an honest effort to meet the tax delinquency problem.—CHARLES M. KNEIER.

The International City Managers' Association, through the Institute for Training in Municipal Administration, has now provided manuals in nine fields for municipal administrators and other students of local government. *Municipal Personnel Administration* (International City Managers' Association, 3rd ed., pp. xii, 429, $7.50) is prepared primarily from the point of view of the operating official who is engaged in public administration at the municipal level, but it will be of interest and value to officials at all levels, and to all persons interested in problems of personnel

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administration. The manual is utilitarian in its approach, aimed at telling the administrator how to deal with his personnel problems and secure the best results. Some background material is presented, but the theory or philosophy of personnel management is reduced to a minimum. While many persons have collaborated in the preparation of the manual, careful editing has provided uniformity in the presentation of the material. To emphasize the how-it-is-done approach, illustrative documents are included, both in the text and in an appendix. There are, among many others, a wage questionnaire, a physical test, a classification questionnaire, an application for examination, and a service record card. All of these are taken from jurisdictions where they are in use and are based on actual experience. The third edition of this manual represents a complete revision, and will increase its value for all persons working in this field. A selected bibliography and an index add to the usefulness of the study.—CHARLES M. KNEIER.

In a *Report on the Constitutional Courts of the State of New Jersey* (State of New Jersey, Commission on Revision of the New Jersey Constitution, pp. 66), Ralph R. Temple has presented an able and well-documented analysis of New Jersey's constitutional courts. The picture is one of almost completely unrelieved inefficiency, maladministration, and poor organization. Although the number of cases in the courts has declined by half during the past decade, the cost of maintaining the system has actually increased. The work load per judge has declined accordingly. Statistics show that judges of the Court of Errors and Appeals do far less work than judges of the highest appellate courts in Connecticut, New York, and Pennsylvania. The judicial system is not organized in such a way as to make sound administration possible. Work is distributed unevenly among the judges. Records are so completely inadequate that intelligent review and control would be seriously hampered even if it were attempted. These are but samples of the deplorable situation which prevails. The study makes no reference to the political reasons for this state of affairs. Such reference is hardly necessary. Nor are specific reforms suggested, except by implication.—J. ROLAND PENNOCK.

Management Methods in City Government (International City Managers' Association, pp. v, 60, $1.50) is a manual of administrative practices in council-manager cities prepared by Orin F. Nolting, assistant director of the International City Managers' Association. As a basis for this study, questions were addressed to city managers to learn what methods had evolved from their experiences. But the study is not a mere tabulation of the practices employed, as it embodies the author's own views of what constitutes good administrative practice in such essential activities as

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the rôle of the manager in dealing with the public, the city council and other local governmental bodies, and his own staff, and his methods of maintaining internal controls. An orthodox exposition of practices generally accepted in theory if not universally followed, the little booklet embodies in its few pages many helpful suggestions for those in administrative posts.—S. GALE LOWRIE.

INTERNATIONAL LAW AND RELATIONS

International law of belligerent occupation, as embodied in the Hague Regulations of 1907, has largely been concerned with economic implications of occupation (requisitions, taxation, contributions, etc.). Despite the great practical importance of the subject, Ernst H. Feilchenfeld's *International Economic Law of Belligerent Occupation* (Carnegie Endowment for International Peace, pp. xii, 181) presents the first elaborate treatment of this topic. For the lawyer, this study is a real treat. It combines wide knowledge of legal theories and practice with a power of interpretation, a faculty of creating appropriate categories and distinctions, and a lucidity of style and arrangement of material which are altogether admirable and up to the best standards of juridical science. Beyond its juristic importance, this study is significant for the political scientist. The traditional law of military government grew out of what Feilchenfeld calls its "nineteenth-century background" and bears its marks in each detail. Thus it implies that there are clear lines of demarcation between war and peace, neutrals and belligerents, civilians and non-civilians, private and public property. None of these assumptions is still generally valid. Even to establish whether a territory has been "actually placed under the authority of the hostile army" (definition of "occupation" in the Hague Regulations) is often difficult. Has Yugoslavia ever been "occupied" under this definition? Apart from the impact, on the laws of occupation, of those economic and other structural changes which can be observed in *all* modern states, and thus are likely to bring up new problems in *any* modern war, it seems that in a war with totalitarian régimes their very expansionism does no longer allow them to regard occupation as a temporary war measure adopted by one sovereign against another, but transforms it into a preliminary step toward the establishment of a new international system, in which independent states are replaced by hegemony relationships. Thus we find annexations, dismemberments, creations of "new states," and formations of dependent "Quisling" régimes already *durante bello*, together with the total integration, economic and otherwise, of the occupied area into a "new order." Although the author is aware of such problems and refers to them occasionally, he has deliberately excluded Second World War questions and events from his treatment. It is to be hoped that he may soon have an opportunity to

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deal with these new aspects of occupation. In the face of a totalitarian transvaluation of all legal values, we are badly in need of a re-statement, in a form adapted to modern requirements, of those rules which will be vital for the liquidation of an ugly past and the inauguration of a better future in large regions of the world.—JOHN H. HERZ.

International Labor Conventions (University of North Carolina Press, pp. xii, 272, $3.00), by Conley Hall Dillon, is a study of the better known materials concerning the labor treaties adopted by the International Labor Conference. The conclusions reached in this study are, as a consequence, those which might be anticipated, conforming to the general and familiar ideas which exist on these treaties. The first chapter reviews, at some length, the origins of the International Labor Organization, and the author then proceeds to deal sketchily with the "actual making of Conventions," reviews governmental bodies competent to interpret and revise them, and sketches their relation to international law. Although this first chapter is in the nature of a summary of the material which follows in the succeeding seven chapters, its discussion of the "actual making of Conventions" is practically the entire treatment which this subject receives in the book. This is disappointing. It is also disappointing that the author's discussion of the interpretation of International Labor Conventions neglects the need of a simpler and more elastic method of securing a clarification of the terms of Labor Conventions than the involved procedure of appealing to the Permanent Court of International Justice. One of the most significant departures which the constitution of the I.L.O. made in the development of international treaties was a provision for economic representation, but Professor Dillon dismisses this aspect of the subject with only a few commonplace sentences. Judgments concerning this innovation in international organization are admittedly difficult, and all the more so when one is limited to documents and published materials, as most American scholars are; but some discussion of the problem and possible standards of judgment were to be expected in a volume of this sort. A number of the author's statements are likely to be challenged by readers. A few examples occurring in the early pages of the study may be cited. The "greatest care" is stated to have been exercised by the International Labor Office in its various functions relating to the preparation of Conventions (p. 12; note 60, on p. 13), but the Office has sometimes been criticized for its lack of care, and Professor Dillon neither presents an analysis of the existing materials on the subject nor suggests any standards by which he arrives at his judgment. It is implied (p. 13) that the double-discussion procedure is satisfactory, whereas there is some disagreement as to this. It is said (p. 16) that the interpretation of Conventions by the Office "is not based on any authority derived from Part

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XIII or any written rule of the Organization." This suggests that in the author's view "a written rule of the Organization" might provide an authorization which Part XIII itself does not grant. It also suggests that this is a usurpation of authority by the Office, whereas no such claim has ever been made either in the Governing Body or the Conference. It would have been more accurate to say that this authority is not *expressly* granted by Part XIII, but is generally recognized to exist by implication. One also wonders what is meant by the statement that the "procedure relating to reservations has been developed over a number of years and now is in workable form" (p. 25), as the author fails to produce any specific information on this. A slip on p. 35 credits Arthur Fontaine with the chairmanship of the Organizing Committee.—SMITH SIMPSON.

The first in what is expected to be a series of periodic surveys, *Inter-American Affairs, 1941* (Columbia University Press, pp. x, 240, $3.00), appears under the editorship of Arthur P. Whitaker. He has contributed the introductory and summary essays and also the section on politics and diplomacy. Other essays are by George Wythe ("Economics and Finance"), W. Rex Crawford ("Cultural Relations"), and William L. Schurz ("Public Health, Social Welfare, and Labor"). Fifty pages of statistical and reference material complete this compact volume. In the historical introduction and in his essay on diplomacy in 1941, Whitaker's central theme is apparently the way in which hemispheric solidarity has differentiated itself from hemispheric isolationism. Whether the merging of Pan-Americanism with the cause of the United Nations is or is not a perversion of the inter-American system is a question which he raises but does not answer. The three events of 1941—conversion of the United States into an arsenal of democracy, Germany's assault on Russia, and Japan's attack at Pearl Harbor—which Whitaker describes as most important "from the point of view of inter-American relations" provide the answer. None was primarily an inter-American event; together, they demonstrate that a special New World system of political relations requires an Old World freed from the grasp of the Axis aggressors. The Wythe contribution is of high quality, while Crawford's lively report on cultural relations gives fresh meaning to this hackneyed phrase. Schurz's competent essay is concerned primarily with social welfare activities within the countries rather than with inter-American relations. A similar essay on internal political developments might have increased the volume's utility to scholars, but perhaps not its contribution to good neighborliness. "Inter-American" replaces "Pan-American" throughout this volume, thus implying that Canada shares with her sister nations in this hemisphere something besides geographical propinquity. In nearly all the essays, however, the section on Canada appears as an appendage tacked

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on to make the contents correspond to the title. The omission of material on British possessions in the Caribbean, with which Canada has intimate relations, intensifies this apparent separateness.—WILLIAM T. R. FOX.

From time to time, ideas come along which purport to be a single cosmic answer to the ills of all mankind. Economic determinism, the conditioned reflex, and raw materials have thus served in the past; the current answer is geopolitics. There is always danger that the layman, if not the scholar, will swallow such answers hook, line, and sinker. Hans W. Weigert has written his *Generals and Geographers: The Twilight of Geopolitics* (Oxford University Press, pp. x, 273, $3.00) in the hope that the reader at least will not swallow the sinker. His book is divided into two parts, an explanation and a warning. In the explanation, he looks up the Haushoferian family tree and turns the spotlight particularly on Spengler, Ratzel, and Mackinder. Then he describes how Haushofer took the ideas of geography and *Lebensraum* and interwove with them a highly emotional and irrational German concept of world domination and peddled the result as a super-science. Weigert's warning, in three parts, is to separate the glands from the geography. In the first place, he warns us against accepting the Haushoferian emotional overtones, which he says is done by many of our current writers in the field. Second, he warns us against underestimating the effect of Haushofer in Germany and states that a peace negotiated with the followers of Haushofer in the army would be little improvement over a peace with Hitler. Third, the author warns us against overlooking the geographic truths of geopolitics, showing in passing a certain weakness for Mackinder himself. Whether the "Heartland," an area which many inhabitants seem to have spent their time trying to get out of, will be as prominent as predicted for purely geographic reasons remains to be seen. It is difficult to argue against a theory so new that recent history is dismissed as of another era. But geographical realities have always been an important factor in interstate relations, and it seems doubtful whether the airplane will so blur the land and seas that geography will not have to be taken into account in politics.—WILBUR W. WHITE.

Since his return from Japan, Ambassador Joseph C. Grew has been tireless in his efforts to awaken the nation from the dangerous illusions it has entertained respecting the enemy across the Pacific. Ten of his public addresses, supplemented with an introductory note and a postscript, and somewhat revised for publication, have been collected in his *Report from Tokyo* (Simon and Schuster, pp. xxvii, 88, $1.00). While most of the material will be familiar to the readers of the State Department's *Bulletin* (which deserves a wider circulation among political scientists than it

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has), Mr. Grew and his publishers are to be congratulated for making the addresses available to a larger public and in more convenient compass. But when Walter Winchell broadcast late in November that on the approaching anniversary of Pearl Harbor this *Report from Tokyo* would be given to the nation, there must have been more than a few among his listeners who looked forward to a full-length account of the Ambassador's stewardship such as Mr. Henderson rendered in his *Failure of a Mission* or Mr. Davies in his *Mission to Moscow*. They probably expected even more. For here they were to have a report from a man who typifies the American diplomat at his finest and who had passed a whole decade in intimate association with the chief actors on the Japanese stage. Who could be more qualified to explain the incomprehensible drama which unfolded in Tokyo between the assassination of Prime Minister Inukai three months after Mr. Grew's arrival and the outbreak of war with the United States just ten years later? Who could more surely unravel for the American public the tangled threads of Japanese politics? Who could better say where the accusing finger should be pointed for the outrage of taking war into China and then all around the Pacific? And who other than Mr. Grew could speak of the Japanese and command closer attention from the American people? Mr. Grew has been speaking to the nation. In his speeches, particularly in these ten, he has answered briefly many questions which the attack at Pearl Harbor forced upon the minds of a shaken and aroused public. But the *Report from Tokyo* leaves us eagerly, even anxiously, awaiting the book that none but Mr. Grew can write.—JAMES T. WATKINS, IV.

For the student of international affairs, Wallace Carroll's *We're in This with Russia* (Houghton Mifflin Co., pp. 264, $2.00) can hardly compare in importance with Joseph E. Davies' *Mission to Moscow* or John Scott's *Duel for Europe*. It is, none the less, a good journalistic effort to remove from American minds some of the common prejudices concerning the Soviet Union. In this respect, however, the most convincing part of the book is not in the early chapters, where Litvinov's policy at Geneva is glorified as altruistic and Chamberlain's efforts to come to terms with Moscow in the summer of 1939 condemned as insincere, but in the chapters describing Russian soldiers and Russian workers during the great German offensive of October, 1941. Carroll was one of the few foreigners in Moscow who believed that the Soviet capital would hold out, and his faith was derived from the impression he had gained of the strength of purpose permeating the Soviet Union from Stalin down. It is this story which will convince most readers that the Russians deserve not only our admiration but our confidence. The concluding section of the book, which purports in particular to tell us "How to do business with Stalin and

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why," is disappointing. It is not enough for an author to give assurances that revolutionary communism stemming from Moscow is no longer a threat to the world, or even to point out that revolution throughout Europe is more likely if we oppose Stalin than if we collaborate with him. What is more important, if it is necessary to answer those who fear (or want) conflict with Russia, is the fact that Russia will continue even after the end of hostilities, our best bulwark against both Germany and Japan, and that Russia, regardless of its form of government, could become a real threat to our security only if it aimed to gain control of either the Atlantic coast of Europe or the Pacific coast of Asia.—HOWARD P. WHIDDEN, JR.

In the *Repertoire of Questions of General International Law before the League of Nations, 1920–1940* (Geneva Research Centre, pp. 390, $3.50), there has become available for specialists in public international law an extremely useful guide to materials which might not otherwise be discovered without much time-consuming research. Dr. Breycha-Vauthier, of the Library of the League of Nations, conceived the project, and Dr. Walter Schiffer did the work of analyzing, compiling, and arranging under classifications. The former suggests in the preface that in the literature on international law there has been a tendency to give too little attention to statements made before League bodies by eminent jurists. The preparation of the volume involved the task of distinguishing between legal and merely political matters and excluding material unrelated to the law. While the publication is mainly in French, titles, sub-titles, the table of contents, and the alphabetical index appear also in English. Preceding each reference or group of references bearing upon a legal question is a condensed statement (in the form of a sentence or title) of the proposition asserted. Interrogative sentences indicate that divergent opinions were expressed. Including those that are cross-references, there are 1,144 entries in the main portion of the *Repertoire*, classified under six headings: "General Questions," "Persons in International Law," "Objects of International Law," "Legal Relations between States" (under which there are, in the subsection relating to International Conventions, 218 numbered entries comprising 48 pages), "International Disputes," and "War and Neutrality."—ROBERT R. WILSON.

On every hand is heard the emphatic statement that the United States expects to win the war and thereafter to enjoy permanent peace. Everywhere is raised a babel of voices arguing the merits of this or that means to the end so ardently desired. In an effort to simplify the problem for the American citizen, Arthur C. Millspaugh has written a popular little book on *Peace Plans and American Choices: The Pros and Cons of World Order*

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(Brookings Institution, pp. 107, $1.00). After briefly summarizing each proposal, he sets forth possible arguments for and against it, with the negative always having the last word. Only political plans are included, and these range from the concept of American domination to that of an international organization stronger than the League of Nations. Included are the balance of power policy, an Anglo-American alliance or union, collaboration by the democracies or all the United Nations, coöperation on a regional basis, and a revived League of Nations. Isolation and world-state programs are dismissed as being impractical. The idea of a new League and that of some stronger association receive the most attention. Style and exposition are simple and clear. The author has accomplished the limited purpose in view. Perhaps some readers may be reminded of youthful forensic contests in which propositions are debated chiefly for their arguable attributes rather than for the purpose of enlightenment and understanding.—G. LEIGHTON LAFUZE.

In the January, 1943, issue of *Fortune*, a leading article is entitled "Hunger Spreads over Europe." Its significant subtitles are: "Selective Starvation has Upset the New Order," "Will It Upset the Axis?" For the statistics therein used, which have been graphically presented, the authors acknowledge their indebtedness to two League of Nations publications, one of which is *Wartime Rationing and Consumption* (Economic Intelligence Service of the League of Nations, pp. 87, $1.00). We who in this country are just commencing to learn the ABC's of rationing would do well to see from an examination of *War Rationing and Consumption* what the peoples of Europe have now been experiencing for more than three years. Not only will our sympathies with them be increased, but our appreciation of the task that confronted Leon Henderson and now confronts Prentiss M. Brown will be all the greater. In addition, we will be thankful that the Office of Price Administration will have the valuable data contained in this book to enable it to avoid some of the pitfalls that beset corresponding agencies in the twelve most important countries of Europe.—JOHN G. HERNDON.

Relying in the main upon his findings in the field, Frank M. Tamagna has produced a study, *Banking and Finance in China* (Institute of Pacific Relations, pp. xxi, 400, $4.00), which continues the high excellence of the earlier volumes of the Inquiry Series in which it is published. The author begins by providing the historical setting, proceeds to the first decade after the Nationalists seized control, and finally goes on to the war years. The book will not have wide appeal: its pages are too studded with fact for that, and its style lumbers a bit; but specialists will find it useful. The volume is not lacking in items of general and current interest, however,

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especially in its treatment of war finance. Thus the author, although he apparently sees no cause for alarm, makes clear that China is faced with the problem of controlling a serious inflationary process. By the time of Pearl Harbor, prices in free China had reached an average of twenty-seven times the pre-war level. To propel consumer goods into the market and shift hoarding from commodities to foreign exchange, the government is levying land taxes in kind and issuing dollar-secured bonds. If these measures fail, more drastic action will follow. T. V. Soong is no doubt correct when he surmises in his preface to the book that the volume may stand for some time "as the standard work in its field."—RALPH A. NOREM.

In his *Canada Today and Tomorrow* (Little, Brown and Co., pp. 338, $3.00), W. H. Chamberlin demonstrates what a good journalist can learn about a strange country from a visit of several months, interviews with leading persons, and consultation of some general books and other material. The result in this case is a competent piece of reporting which will no doubt be more widely read by the general public than the other better books on Canada now available. Mr. Chamberlin emerges as a journalist of shrewd analysis and keen observation, but with his reputation as an authoritative writer on modern politics hardly enhanced. On the whole, major inaccuracies of fact or interpretation have been avoided, although a considerable number of minor errors must be noted. In parts, the book descends to the level of a guide-book; elsewhere it rises to that of a better newspaper or magazine article. Of Mr. Chamberlin's conclusions, the one most open to question concerns the union of Canada and the United States, which he considers feasible in the event of the defeat of Britain or a compromise peace. Given a British victory, however, Canada, he believes, will continue to act as an interpreter between the United States and Britain, with the balance tipping somewhat further towards the North American than the European side.—H. GORDON SKILLING.

Volume IV of the Yale University prize essays, Edward Tenenbaum's *National Socialism vs. International Capitalism* (Yale University Press, pp. 127, $1.00) records the negation of free enterprise by Germany after 1933, and the resulting challenge to international capitalism. To explain how Germany enmeshed much of the world in an economic prison, which developed generally into military as well as economic exploitation, the Nazi methods of economic warfare are surveyed. Tenenbaum concludes therefrom that dissolution of international capitalism can be prevented by economic concordance among nations for control of the business cycle, with automatic regulation inherent in international trade; that without such agreement, some one nation will dominate by political means. His

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premise that full economic freedom existed under international capitalism, and that coöperation can be achieved by solely economic means, is ingenuous, and non-recognition of politico-economic concentaneity based on a system other than capitalism or fascism stems from circumscribed classical thinking. However, his analysis of the German weapons of economic warfare is well delineated and presents some hitherto unpublished information to which the author had access through the confidential files of the Joint Boycott Council. This factual survey is a well organized addition to the literature about the Nazi economy.—RITA DAVIDSON.

There seems to be a real justification for another book on the Berlin Conference of 1884 and 1885. While the subject is treated at more or less length in two earlier works particularly, and in other books, S. E. Crowe, in his *The Berlin West African Conference* (Longmans, Green and Co., pp. 249, $6.00) has used a wider range of sources and has emphasized the actual negotiations before, in, and during the conference rather than merely the results of the negotiations. The book consists of two parts. The first deals with the preliminary negotiations. In this section the author stresses the Anglo-Portuguese negotiations which failed, the Anglo-German estrangement which arose as a result of the friction over German annexation of its West African colony, the creation of a Franco-German entente for a short period, and the rôle of King Leopold of the Belgians. The second part of the book treats the negotiations that took place within and during the Conference. In this section the author stresses the fact that the assembly of the Powers was a West African rather than an African conference, that Bismarck made many blunders during the conference, that the success of King Leopold was due to the support of Bismarck, and that the conference was really a triumph for Great Britain. American scholars will be interested in the author's conclusion that Mr. Langer in his well-known work on this period made a number of mistakes.—C. P. HIGBY.

In his *Mexican Oil* (Harper and Brothers, pp. 83, $1.50), Harlow S. Person presents a brief, readable account of the controversy precipitated by the expropriation of American-owned Mexican oil lands in 1938. He stresses as the major cause of the misunderstanding the Mexican belief that oil resources belong to the nation rather than to those who own the land. Growing agitation on the part of Mexican labor that resented foreign exploitation helped to force the government to expropriate the oil fields when it preferred further negotiation with the owners. The Nazi menace gradually made both nations anxious to settle the controversy in the interest of hemispheric solidarity. This led to the appointment of two experts, one Mexican and one American, who on April 17, 1942, recom-

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mended the payment of almost twenty-four million dollars to the American oil interests. That the experts accepted the Mexican view of land ownership is shown by the fact that the Americans had demanded two hundred millions.—ROBERT S. MCCORDOCK.

POLITICAL THEORY AND MISCELLANEOUS

A new printing of T. H. Green's *Lectures on the Principles of Political Obligation* (Longmans, Green and Co., pp. xix, 252, $3.00), with an excellent introduction by A. D. Lindsay, is a welcome addition to literature on politics. The lectures, criticizing and evaluating the discussion of political obligation in Spinoza, Hobbes, Locke, and Rousseau, and developing Green's own views of the matter, were delivered in 1879 and published after his death in 1882. They represent, as Lindsay says in his introduction, "the most important contribution to political theory of the school of thought known as the Oxford Idealists," which included such writers as Ritchie, Caird, and Wallace. *Lectures on the Principles of Political Obligation* provides a kind of illustrative commentary on Green's *Prolegomena to Ethics*, edited by A. C. Bradley and published in 1883. It represents an approach to the moral questions of politics by a man who was, though a university professor, an ordinary citizen and a real democrat intensely interested in practical politics. The lectures do not attempt to describe governmental organization or what it does, but contain a searching examination of the principles of political obligation, of the moral justification for social institutions, of the question: "Why Should I Obey the State?" The conclusions are fundamentally individualistic and democratic. Rejecting deterministic and utilitarian doctrines and emphasizing man's free will and rational character, Green finds justification for organized political authority in the opportunities that it provides men to give reality to the free exercise of their will and reason. This does not mean for Green an unregulated individualism in which each is for himself and the devil take the hindmost. Green sees clearly enough the evils of such a society. He sees, too, that coercive power must be exercised. The state must interfere with the social and economic life of the community in a positive and creative way in order to liberate "the powers of all men equally for contributions to a common good." The state's task is to remove social and economic conditions that make it impossible for the mass of men to have real freedom. But this does not justify any and all exercise of the state's power. The business of the state is not to compel morality, but to maintain those conditions which make moral life possible. The state must be judged by the services it renders and, contrary to many interpretations, Green saw that "there may be cases in which the public interest . . . is best served by a violation of some actual law." Green's political philosophy was, as all fruitful political philosophy must be, an

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outgrowth of his view of the nature of man and of the world; and Green was a political democrat, as perhaps all political democrats must be, because he was first of all a spiritual democrat. Unfortunately, Green is not widely read by American political scientists and probably will not be. American "political science," trying hard to be scientific and bent on describing the organization, legal relations, and, to some extent, the processes of government, shows little interest in metaphysical, psychological, or ethical questions. Moral values are put out the front door deliberately and consciously only to enter surreptitiously through the back door where they come and go unexamined and uncriticized. There is no greater failure of American political science than the failure to consider deliberately and critically the moral questions of politics. It is probably unrealistic to hope, therefore, that a new edition of Green's *Political Obligation* will stimulate a genuine critical interest in such problems, but perhaps it is not too much to hope that some of the few who read it will get from Green—as Green got from Kant, and Kant from Rousseau—a renewed belief in the worth and dignity of the common man.—E. M. KIRKPATRICK.

In his *Men of Substance* (University of Chicago Press, pp. ix, 283, $3.00), W. K. Jordan presents the religious, political, economic, and social thought of Henry Parker and Henry Robinson, men, in the author's words, "gripped with the vision of a nobler world," and working in common in seventeenth-century England" to destroy forever the theory of a Catholic religious society supported by the arm of persecution and to fashion the design of a new economic and social order." Mr. Jordan finds these men typical of the conservatism characteristic of the dominant English revolutionary thought of the period, which he describes as liberal rather than democratic. Their most distinctive contribution, in his opinion, is their advocacy of religious toleration, Parker an Erastian, advocating a national church with the state "imposing a peace of tolerance" for the sake of political unity; while Robinson, allied with the Independents, denied the magistrate any power over religion, and, in the interest of social and political stability and order, was prepared to accept a resulting "complete fragmentation of religious institutions." Both men supported Parliament, Parker developing a more complete and coherent body of political thought than did Robinson. This book furnishes an important chapter in the history of political speculation. One could wish, however, that Mr. Jordan had followed here the plan pursued in his earlier *History of Religious Toleration*, of which the present study is in effect a continuation. In that work, use is made throughout of systematic captions, the necessary preliminary to which was a sifting and clarification of material. Failure to follow this method in the work under review has resulted in frequent and sometimes confusing repetition, and in loss of

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emphasis. The reviewer missed some discussion of the relation of these two significant exponents of religious toleration to the movement under the *Politiques* in sixteenth-century France, with whose position they would seem to have had much in common.—ELLEN DEBORAH ELLIS.

The great merit of Winthrop S. Hudson's *John Ponet, 1516?–1556, Advocate of Limited Monarchy* (University of Chicago Press, pp. 429, $4.50) is that it provides a complete facsimile reproduction of the 1556 edition of Ponet's *A Short Treatise of Politike Power,* prefaced by a stimulating analysis of the historical setting of this remarkable political tract. Some hundred pages are devoted to Ponet, the man, and his times, while a hundred more examine his political theory. There is a useful bibliography. Ponet, Bishop of Winchester, intimate of Cranmer, Marian exile, was "the first person among English Protestants—and, indeed, among the Reformed groups on the Continent as well—definitely to advocate resistance by the people to authoritarian government and to base this resistance upon constitutional principles" (p. 180); while his ideas are forerunners of those of Christopher Goodman and Thomas Cartwright. A constitutionalist, he nevertheless discerned no "workable method for the expression and enforcement of the popular will," and lacking this, he "was driven to assert the right of rebellion and of tyrannicide when all other expedients had failed." Ponet's text affords sturdy reading, for he wrote "as a propagandist who is making his appeal to the common man rather than to the erudite." Hudson rejects the view of J. W. Allen that Ponet's *Treatise* "had little significance of any sort" for England, and makes a persuasive case for assigning it an important rôle in the growth of political thought in England, on the Continent, and in America.—JAMES J. ROBBINS.

In his *Democracy by Discussion* (American Council on Public Affairs, pp. vi, 59, $1.00), Emory S. Bogardus provides an excellent brief description of some ten forms of group discussion, including the forum, panel, group meeting for listening-discussion, informal, advanced and advisory discussion, as well as reading and correspondence circles. The writer comes down to brass tacks when he suggests the most helpful procedures and points out the pitfalls that can play havoc with discussion. He stresses the importance of skilled leaders and of study. The euphonious title of the pamphlet, however, is pretentious—"Democratic Discussion" would have been more correct. Except in a general and incidental way, no attempt is made to suggest how good discussion can be translated into democratic action, as is done, for instance, by the League of Women Voters. Although Dr. Bogardus is all for action—"Democracy built on discussion groups throughout the land will enable people to correct the evils of both

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'big business' and of 'big government,' without resorting to revolution" (p. 38)—he does not show how the discussion part of democracy can be implemented for action. This is, of course, a common shortcoming of discussion groups, accounting for much of the feeling of helplessness that confronts even intelligent persons with civic interests.—JOHN BROWN MASON.

Marion B. Smith's *Survey of Social Science* (Houghton Mifflin Co., pp. xiv, 690, 33 plates, $3.75) is the product of a full-year freshman course in general social science established at Louisiana State University about ten years ago. This text for the course is directed toward preparing undergraduates for their civic responsibilities by providing knowledge of the factors influencing human behavior and of the social institutions engaging the greater part of our lives. It purports to convey a knowledge more adequate than that gained "from the study of military or political history or from any one of the specialized social sciences." Commendable though the purpose is, there is too much "dehydrated" information compressed within the covers of one textbook. Only highly competent instructors would be able to present the material in palatable form. The insertion of thirty-two full pages of pictures is not enough to assure the desired result. An integration of the social sciences should not condense and present in outline form the subject-matter of the introductory courses in all of the "specialized social sciences."—HOWARD WHITE.

Now comes lawyer-author Irving H. Flamm with *An Economic Program for a Living Democracy* (Liveright Publishing Corp., pp. xv, 342, $3.00), consisting of the familiar indictment against capitalist free enterprise, and a plan for reconstructing the economy of the United States after the fashion by which ailing corporations are reorganized in courts of law. Sincere and well-meaning, but typical over-the-demitasse social science, with the usual symptoms of irrational reform.—GEORGE H. E. SMITH.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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The United Nations Information Office publishes the United Nations Review, now in its third volume. It is valuable for documents and citations to documents. Special supplement no. 1. January 30, 1943, is War and Peace Aims: extracts from statements of United nations leaders. 136 p. 25¢.

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